



## LIBYA

### Stakeholder Submission to the United Nations

#### Universal Periodic Review

22<sup>nd</sup> Session of the Working Group on the UPR

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**The Advocates for Human Rights,**

an NGO holding ECOSOC Special Consultative status since 1996,

and

**Mobilising for Rights Associates**

**The Advocates for Human Rights** (“The Advocates”) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates’ Women’s Human Rights Program has published 23 reports on violence against women as a human rights issue, frequently provides consultation and commentary on drafting laws on domestic violence, and trains lawyers, police, prosecutors, and judges to effectively implement new and existing laws on domestic violence.

**Mobilising for Rights Associates** (“MRA”) is an international non-governmental women’s rights organization based in Rabat Morocco and currently working in Libya, Morocco and Tunisia. MRA collaborates with grassroots level women’s rights activists and organizations to promote women’s full enjoyment of their human rights through changes in laws, structures, relationships and cultural attitudes. Together with its partners MRA creates and implements long-term strategies to address the diverse causes of discrimination against women and develop meaningful, effective solutions. MRA’s strategies include popular human rights education, legal accompaniment, cause lawyering, action-research, national law reform, and international advocacy. By engaging with local actors at different levels, MRA fosters micro-level changes in culture and relationships to support activism for macro level legal and institutional reform.

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## EXECUTIVE SUMMARY

1. From October 2013 to September 2014, an MRA team held informal consultations and conversations with over 40 members of diverse local Libyan NGOs, lawyers, human rights activists, and other stakeholders. Information gathered from these consultations, as well as information from ongoing contacts, demonstrates that Libya has not successfully implemented recommendations pertaining to women’s rights from its first Universal Periodic Review.
2. Women’s rights were violated during the regime of Muammar Qaddafi, during the 2011 revolution, as well as during the transition, and women’s rights continue to be violated during the ongoing civil conflicts and violence in Libya.
3. A 2013 nationwide survey demonstrates that most Libyan men hold conservative social attitudes with regard to women’s roles and rights, especially in terms of political participation, domestic violence, employment, marriage (including polygamy), and other family matters.<sup>1</sup> Only 20% of all women surveyed reported taking part in any type of civic activity to express their views on social or political issues. There is also a substantial gender gap in voter participation. 66% of women surveyed participated in the General National Congress (GNC) elections in 2012, a participation rate 22% lower than that of men.<sup>2</sup>
4. Gender-based violence, including sexual assault, remains a concern. During the armed conflict in 2011, women were subjected to rape and sexual violence by both Qaddafi armed forces and opposition groups. Full prosecution of the perpetrators has yet to happen. Since the 2011 revolution, the transitional government has added to the problem by: (1) passing a law that sanctions impunity for serious human rights violations, including sexual offences; (2) overturning a law intended to reduce the prevalence of polygamy; and (3) allowing policies that curtail women’s freedom to engage in public life.
5. Unlawful killings and violent threats have been a constant feature of life in Libya since the end of the Qaddafi regime. Women’s rights activists, journalists, and politicians, have been increasingly harassed, intimidated, attacked, and killed by militias. The recent killings of human rights activist and lawyer Salwa Bugaighis and Derna Congresswoman Fariha Al Berkawi demonstrate that lives of women who speak out are in peril.
6. The laws and regulations under the Qaddafi’s government that discriminated against women are still in effect. Women are still subject to forced participation in social rehabilitation centers. Extramarital relations are still a crime and perpetrators of so-called honor crimes continue to receive lesser punishment.
7. Political changes in Libya have created a unique opportunity to reshape the status of women. Libyan authorities should seize this opportunity to protect and promote women’s rights with constitutional and legislative guarantees. The Advocates and MRA offer the following recommendations, among others, that the Libyan Government:

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<sup>1</sup> International Foundation for Electoral Systems (IFES), Libya Status of Women Survey 2013, available at [http://www.ifes.org/~media/Files/Publications/Survey/2013/Libya%20Status%20of%20Women%20Survey%20Report\\_final2.pdf](http://www.ifes.org/~media/Files/Publications/Survey/2013/Libya%20Status%20of%20Women%20Survey%20Report_final2.pdf), last visited Sept. 15, 2014.

<sup>2</sup> Id.

- amend Articles 407 and 408 of the Penal Code and repeal Law No. 70 of 1973 to decriminalize sexual relations between consenting adults and ensure that victims of sexual assault do not face the risk of criminal prosecution;
- adopt comprehensive domestic violence legislation with both civil and criminal provisions, including provision to punish the perpetrator, ensure that the prohibitions and punishments are enforced effectively, and provide protection for the victim;
- criminalize spousal rape and implement a public education and awareness-raising campaign about the law;
- ensure that the Draft bill on Rape and Violence against Women is passed into law and repeal provisions of Special Procedures Law No. 38 of 2012 that would grant immunity for gender-based violence, and ensure that all perpetrators of gender-based violence during the 2011 conflict are brought to justice;
- take active measures to ensure the security of women human rights defenders, activists, and politicians, and to ensure that women’s rights activists are able to organize and assemble to express their views; and
- abolish the use of social rehabilitation centers, immediately release all women and girls currently being held in these centers, and transform existing facilities to safe homes and shelters available to all vulnerable women and girls on a strictly voluntary basis, and ensure that these facilities provide job training, childcare, support, counselling, and other services for vulnerable women and girls.

## **I. Background**

### **A. 2010 UPR Recommendations and Libya’s Response**

8. Libya received 18 recommendations on women’s rights during its first Universal Periodic Review. It accepted 15, including recommendations that called for a national strategy to combat discrimination against women, policies and legislation to combat violence against women, and efforts to enhance women’s participation in the social, economic, and political fields.<sup>3</sup>

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<sup>3</sup> See Human Rights Council, Report of the Working Group on the Universal Periodic Review: Libyan Arab Jamahiriya, UN Doc. A/HRC/16/15, Jan. 4, 2011, ¶¶ 95–96 (“Explore the possibility of adopting a national strategy to combat discrimination against women” (Malaysia); “Continue to make progress in education and health care, with a particular focus on women and girls, in order to achieve quality education and a quality health-care system” (Myanmar); “Adopt policies and legislation aimed at promoting women’s rights and combating gender-based discrimination, particularly domestic violence” (Brazil); “Continue to scale up its efforts to empower women, mainly rural women” (North Korea); “Continue its efforts in promoting human rights and gender equality, and ensure that women can be involved in the labour market” (Tunisia); “Continue the measures to promote women rights, including the advancement of women’s empowerment” (Azerbaijan); “Continue its efforts to promote women’s role in social and public life, and protect them from violence” (Iran); “Continue the implementation of measures designed to enhance the role of women in social and political life” (Belarus); “Strengthen measures and policies to promote the active role and participation of women in the political, social and economic life of the country” (Vietnam); “Continue its special efforts to empower women in various areas, in particular in the labour market” (Egypt); “Step up efforts to enhance the participation of women in all spheres of socio-economic life, in line with the progress made in education” (Bangladesh); “Continue to take practical measures to ensure the effective participation of women in economic, social and political fields” (Pakistan); “Take comprehensive measures to eliminate violence against women and children, in particular by adopting a national strategy to combat violence

9. During the adoption of the report, the Libyan Government explained that certain recommendations concerning women’s rights “did not enjoy the support of Libya as they are in conflict with Islam religion.”<sup>4</sup>

## **B. Domestic Legislative Framework**

10. Libya has in place a number of laws relevant to women’s rights. The 1953 Penal Code<sup>5</sup> contains general prohibitions that could be applied to protect and promote women’s rights. Law No. 10 of 1984 regulating Marriage and Divorce provides different rights in marriage for women. Article 17(c) addresses domestic violence, stating that: “a woman has the right to expect her husband to . . . refrain from causing her physical or psychological harm.”<sup>6</sup> Law No. 24 of 2010 grants Libyan women the right to pass on their citizenship to their children.<sup>7</sup> The Consolidation of Freedoms Law No. 20 of 1991 provides for equal opportunity for men and women to choose the work that suits them.<sup>8</sup>
11. The 2011 draft Constitutional Declaration issued by the National Transitional Council (NTC), which remains in effect until a permanent Constitution is adopted, provides for equality under the law in civil and political rights, and includes prohibitions against gender-based discrimination.<sup>9</sup> Law No. 20 of 2013 on torture, enforced disappearance, and discrimination, adopted by the General National Congress (GNC), also includes sex as one of the prohibited grounds of discrimination and mandates punishment of not less than one year in prison for anyone found guilty of discrimination on the basis of class, group, region, sex, or color.<sup>10</sup>
12. Most of these laws, as well as others discussed below, are problematic and ineffective. They perpetuate discrimination and violence against women and do not contain clear enforcement mechanisms. The text and application of the laws contribute significantly to the prevalence of violence and discrimination against women in Libya.

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against women, as recommended by the Committee on the Elimination of Discrimination against Women” (Thailand); “Continue to make progress in education and health care, with a particular focus on women and girls, in order to achieve quality education and a quality health-care system” (Myanmar); “Continue its efforts to increase job opportunities for educated women in the Libyan Arab Jamahiriya” (Sudan)); see Human Rights Council, Draft report of the Human Rights Council on its nineteenth session, UN Doc. A/HRC/19/2, Apr. 10, 2012, ¶ 421.

<sup>4</sup> Human Rights Council, Draft report of the Human Rights Council on its nineteenth session, UN Doc. A/HRC/19/2, Apr. 10, 2012, ¶ 421.

<sup>5</sup> The Libyan Penal Code, available at:

<https://ia600704.us.archive.org/25/items/LibyanPenalCodeenglish/LibyanPenalCode.pdf>, last visited Aug. 24, 2014.

<sup>6</sup> Human Rights Watch, *A Revolution for All - Women's Rights in the New Libya*, May 2013, at 26, available at [http://www.hrw.org/sites/default/files/reports/libya0513\\_brochure\\_LOWRES\\_0.pdf](http://www.hrw.org/sites/default/files/reports/libya0513_brochure_LOWRES_0.pdf), last visited July 30, 2014.

<sup>7</sup> Law Number (24) of 2010/1378 On the Libyan Nationality, May 28, 2010, available at <http://www.refworld.org/docid/4e2d8bf52.html>, last visited Aug. 19, 2014.

<sup>8</sup> See Alison Pargeter, *Women’s Rights in the Middle East and North Africa: Libya*, Freedom House (2010), at 13, [http://www.freedomhouse.org/sites/default/files/inline\\_images/Libya.pdf](http://www.freedomhouse.org/sites/default/files/inline_images/Libya.pdf), last visited Aug. 4, 2014.

<sup>9</sup> Libya Draft Constitutional Declaration, available at <http://corpus.learningpartnership.org/wp-content/uploads/2012/12/Libya-Constitutional-Declaration-Draft-2011-English.pdf>, last visited July 28, 2014.

<sup>10</sup> See *GNC Agrees Uncompromising Law on Torture, Kidnapping and Discrimination*, Libya Herald, Apr. 2, 2013, <http://www.libyaherald.com/2013/04/09/gnc-agrees-uncompromising-law-on-torture-kidnapping-and-discrimination/>, last visited Aug. 18, 2014.

## II. Promotion and Protection of Human Rights on the Ground

### A. Existing Laws Perpetuate and Exacerbate Violations of Women’s Rights.

#### 1. Qaddafi Era Laws

##### Rape and Sexual Assault

13. The Penal Code contains several provisions that discriminate against women. The Penal Code addresses sexual violence as a crime against a woman’s honor rather than against her person.<sup>11</sup> If a woman has been raped, she is considered to have lost her honor. As a result, courts focus on a victim’s sexual history rather than on the crime against her, treating sexual violence, including rape, with leniency.<sup>12</sup>
14. As a purported social remedy, a rapist is expected to marry his victim to “save” her honor. The law provides for imprisonment of up to 25 years for a convicted rapist if the victim does not agree to marry him.<sup>13</sup> The victim’s consent is needed for such a marriage, but societal and family pressure often leaves a victim with no option but to marry her rapist, rendering her vulnerable to more sexual abuse.<sup>14</sup>
15. Moreover, a victim of rape can be criminally prosecuted for engaging in extramarital sex. Articles 407 and 408 of the Penal Code together with Law No. 70 of 1973 criminalize extramarital sex. These “Zina laws” provide for up to five years imprisonment and punishment by flogging of 100 lashes for engaging in extramarital sexual relations. Rape victims face potential prosecution under these laws if they press charges; these criminal penalties therefore deter women from seeking remedies.<sup>15</sup>
16. Spousal rape is not a crime in Libya. It is considered a private matter that carries a great deal of shame if publicly reported. Women fear that if they report spousal sexual violence, their husbands and extended families will reject them.<sup>16</sup>
17. The Penal Code also provides lesser punishment for men who commit crimes against women when those crimes are allegedly motivated by the need to preserve honor. Article 375 allows for reduced punishment for a man who kills his wife, daughter, mother, or sister if he finds them engaging in adultery or fornication.<sup>17</sup> The maximum penalty for such crime is imprisonment for an unspecified number of years. The punishment for the same crime where honor is not the motivating factor is life imprisonment. Article 375 further limits the punishment for a man whose honor-motivated violence results in “grave or serious injuries” to his female relative, to two years imprisonment. The same violence could result in 7.5 years in prison if honor is not the motivating factor.<sup>18</sup> Article 375 also condones gender-based violence by providing that a man who “merely” beats his wife,

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<sup>11</sup> Human Rights Watch, *supra* note 6, at 26.

<sup>12</sup> *Id.*

<sup>13</sup> U.S Department of State, *Country Report on Human Rights Practices, “Libya 2013 Human Right Report,”* at 24, available at <http://www.state.gov/documents/organization/220578.pdf>, last visited July 28, 2014.

<sup>14</sup> See Pargeter, *supra* note 8, at 13.

<sup>15</sup> Human Rights Watch, *supra* note 6, at 27.

<sup>16</sup> See Pargeter, *supra* note 8, at 13.

<sup>17</sup> Human Rights Watch, *supra* note 6, at 5.

<sup>18</sup> *Id.* at 26.

daughter, sister, or mother caught in the act of unlawful intercourse shall not be punished.<sup>19</sup>

**18. Suggested Recommendations:**

- Amend the Penal Code to clarify the definition of sexual violence as a crime against a woman as an individual and not against her honor.
- Eliminate the provision in Article 424 of the Penal Code which allows the perpetrator of rape to escape punishment if the victim agrees to marry him and ensure that all perpetrators of rape face the same punishment provided by law.
- Amend Articles 407 and 408 of the Penal Code and repeal Law No. 70 of 1973 to decriminalize sexual relations between consenting adults and ensure that victims of sexual assault do not face the risk of criminal prosecution.
- Criminalize spousal rape and implement a public education and awareness-raising campaign about the law.
- Amend Article 375 to ensure that a man who kills or causes injury to a woman does not receive a reduced sentence for citing honour as the motivating factor, and that sanctions are commensurate with the severity of the offence.

Domestic Violence

19. Article 17(c) of Law No. 10 of 1984 prohibits domestic violence, but it does not specifically criminalize domestic violence.<sup>20</sup> The law does not contain any enforcement mechanisms and fails to provide effective protection or remedies for victims. Moreover, it does not apply to intimate partner violence taking place outside of wedlock or to violence perpetrated by a former intimate partner. There is very little information on the penalties for violence against women or violation of the prohibition against “physical or psychological harm.”<sup>21</sup>
20. Because the Penal Code does not expressly address domestic violence, the criminal justice system can address domestic violence only under the Penal Code’s provisions governing assault. Article 63 of the Penal Code stipulates that evidence of injury is required to prove assault.<sup>22</sup> Current practice limits what forms of violence the law recognizes as domestic violence, and the law creates an undue evidentiary burden on women seeking protection and redress from the courts for forms of violence that do not cause apparent physical injury.

**21. Suggested Recommendations:**

- Adopt comprehensive domestic violence legislation with both civil and criminal provisions, including provision to punish the perpetrator, ensure that the prohibitions and punishments are enforced effectively, and provide protection for the victim.

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<sup>19</sup> Id. at 7.

<sup>20</sup> Id. at 25–26.

<sup>21</sup> U.S Department of State, *supra* note 13, at 23–24.

<sup>22</sup> Pargeter, *supra* note 8, at 13.

- Exclude the application of Article 63 of the Penal Code (requiring proof of physical violence for assault) in cases involving domestic violence; in order to remove the undue evidentiary burden on women.
- Provide training to police officers, prosecutors, and judges on effective implementation of the law and gender sensitivity.
- Launch awareness campaigns on domestic violence through radio discussion programs, television soap operas, panel discussions, and community sensitization events to overcome societal resistance to discussing violence against women and to mainstream a culture of reporting violence.
- Define psychological harm in Article 17(c) of Law No. 10 of 1984 to include coercive control, which does not necessarily cause physical injury but deprives a woman of freedom in her personal, social, economic and political life,<sup>23</sup> and ensure that Libya’s domestic violence laws address aspects of the emotional and physical abuse, as well as the exposure of family privacy, that often accompanies domestic violence cases.

#### Citizenship

22. Article 11 of Law No 24 of 2010 provides for Libyan nationality to children born to Libyan mothers and foreign fathers. Article 3, however, defines a Libyan as one who is born to a Libyan father, or to a Libyan mother and a father who is stateless or whose nationality is unknown.<sup>24</sup> The law is silent on the right to citizenship for children born to a Libyan mother who is married to a man who is not stateless and who has a known nationality other than Libyan.<sup>25</sup>

#### **23. Suggested Recommendation:**

- Amend Article 3 of Law No. 24 of 2010 to clarify that children born to a Libyan mother and a father who has a nationality other than Libyan are eligible for Libyan citizenship.

#### Employment

24. Labor Law No. 58 of 1970 places limitations on the type of work women can do. Article 95 stipulates that women may not be employed in difficult or dangerous jobs. Article 96 provides that Libyan women may not work more than 48 hours a week including over time, nor can they work between 8 p.m. and 7 a.m. unless authorized by order of the Workforce, Training, and Employment Secretariat in the General People’s Committee.<sup>26</sup> These provisions undermine the legal guarantee in Law No. 20 of 1991, which allows women to freely choose the work that suits them. Legal restrictions on the type of work women can do and the hours worked forces Libyan women into certain fields

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<sup>23</sup> Helen Rubenstein, Coercive Control: A New Model for Understanding Domestic Violence, StopVAW.org, [http://www.stopvaw.org/uploads/coercive\\_control\\_a\\_new\\_model\\_for\\_understanding\\_domestic\\_violence.pdf](http://www.stopvaw.org/uploads/coercive_control_a_new_model_for_understanding_domestic_violence.pdf), last visited Aug. 20, 2014.

<sup>24</sup> Human Rights Watch, *supra* note 6, at 31.

<sup>25</sup> Law Number (24) of 2010/1378 On The Libyan Nationality, May 28, 2010, available at <http://www.refworld.org/docid/4e2d8bf52.html>, last visited Aug. 19, 2014.

<sup>26</sup> Human Rights Watch, *supra* note 6, at 17.

traditionally associated with females, such as education, health services, and secretarial or cleaning work. These fields pay less, undermining women’s economic stability.

## 25. Suggested Recommendation:

- Repeal Articles 95 and 96 of Labor Law No. 58 of 1970 to allow the full enjoyment of the legal guarantee in the Consolidation of Freedoms Law No. 20 of 1991.

## 2. Recent Laws Enacted by the Transitional Government

### Gender-Based Violence During the 2011 Conflict

26. Rape was widespread during the 2011 conflict. According to a survey of 59,000 families, 259 women reported that they had been raped by Qaddafi’s forces in cities including Ajdabiya, Bayda, Benghazi, Brega, Misrata, Saloum, and Toburk.<sup>27</sup> The Libyan government has done little to investigate these allegations or to provide services to the victims. In a March 2013 report to the UN Security Council on sexual violence in conflict, the UN Secretary-General noted that, with the exception of the charge of mass rape in Zuara in the trial of the former Prime Minister Al-Baghdadi al-Mahmoudi, the Libyan Government had not “initiated investigations into conflict-related sexual violence, nor developed new legislation, policies, programs or services for victims.”<sup>28</sup>
27. In June 2013, the Justice Commission approved a Draft Law on Rape and Violence against Women. The law aims to provide services and compensation to people who suffered violence during the 2011 conflict, including women who were raped by people fighting on both sides. The bill is now awaiting consideration by the GNC.<sup>29</sup>
28. The NTC, by adopting the Special Procedures Law No. 38 of 2012, granted immunity from prosecution for serious crimes, including war crimes and crimes against humanity, committed by members of anti-Qaddafi groups, as long as these acts were “necessary” for the success of the revolution.<sup>30</sup> As a result, the Draft Law on Rape and Violence against Women would be limited in scope to acts of violence committed by Qaddafi’s military and would not bring anti-Qaddafi groups to justice. It remains to be seen whether anti-Qaddafi militia groups will be prosecuted. The enactment of Law No. 38 demonstrates the Libyan Government’s tolerance of impunity for serious human rights violations including rape and sexual assault. The blanket immunity for anti-Qaddafi forces

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<sup>27</sup> *Hundreds of Women Raped by Gaddafi Militia*, The Independent, May 29, 2011, <http://www.independent.co.uk/news/world/africa/hundreds-of-women-raped-by-gaddafi-militia-2290609.html>, last visited Aug. 4, 2014.

<sup>28</sup> United Nations General Assembly Security Council, *Sexual Violence in Conflict: Report of the Secretary-General*, UN Doc. A/67/792-S/2013/149, Mar. 14, 2013, ¶ 97, available at [http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2013\\_149.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_149.pdf), last visited Aug. 18, 2014.

<sup>29</sup> *Libya: Parliament must support justice for rape victims*, FIDH (with PDF links to draft law in English, Arabic and French), available at <http://www.fidh.org/en/north-africa-middle-east/libya/14290-libya-parliament-must-support-justice-for-rape-victims>, last visited Sept. 3, 2014.

<sup>30</sup> Human Rights Watch, *Priorities for Legislative Reform - A Human Rights Roadmap for a New Libya*, Jan. 21, 2014, at 43, available at <http://www.hrw.org/reports/2014/01/21/priorities-legislative-reform>, last visited Aug. 18, 2014.



“propagates a culture of selective justice” and violates Libya’s obligations to investigate and prosecute serious violations of international human rights and humanitarian law.<sup>31</sup>

**29. Suggested Recommendations:**

- Ensure that the Draft bill on Rape and Violence against Women is passed into law and repeal provisions of Special Procedures Law No. 38 of 2012 that would grant immunity for gender-based violence, and ensure that all perpetrators of gender-based violence during the 2011 conflict are brought to justice.
- Open resource centers and shelters throughout the country to provide support and services to victims of sexual assault, rape, and other forms of gender-based violence.
- Develop and implement a scheme to protect and compensate victims of gender-based violence, especially rape.

Prohibition on Media Discussion of Fatwas

30. In 2012, the NTC passed Law No. 15 on prohibiting media discussion of religious legal opinions (Fatwa) issued by the Office for Islamic Legal Opinions (Dar al-Ifta). The law stipulates that all members of society must respect Fatwas issued by Dar al-Ifta and that Fatwas may not be discussed in the media. The Dar al-Ifta was dissolved in 1993 during Qaddafi’s regime. The NTC re-established it in February 2012 as an independent institution that reports directly to the Head of State. It has authority to issue Islamic legal opinions and supervise academic affairs.<sup>32</sup> As discussed in the next section, the Grand Mufti recently issued Fatwas with negative effects on women’s rights.

**31. Suggested Recommendation:**

- Repeal Law No. 15 and ensure media freedom to discuss and criticize all government policies and laws, including opinions of the Dar al-Ifta.

**B. Women in Libya Face Religious and Societal Discrimination.**

32. As of April 2013, the GNC had criminalized discrimination based on gender, but the Libyan Government has not effectively enforced this prohibition. Indeed, the Supreme Court and religious leaders have taken actions that contradict such efforts. Law No. 15, discussed in paragraph 30 above, makes it even more difficult to discuss actions by religious leaders that discriminate against women.

33. In March 2013, Libya’s Grand Mufti, reportedly issued a Fatwa against a charter prepared by the UN Commission on the Status of Women on the grounds that it was incompatible with Sharia law. “He criticized the Charter’s call for equality between men and women, its provisions for inheritance, and what it said about sexual freedoms and the rights of children who are born out of wedlock.”<sup>33</sup> Also, the GNC’s Islamic Affairs

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<sup>31</sup> Id.

<sup>32</sup> Id. at 22.

<sup>33</sup> Hisham Munawar, *Women’s Rights Still Lacking in Libya*, Al-Monitor, Nov. 25, 2013, <http://www.al-monitor.com/pulse/culture/2013/11/libya-revolution-women-rights.html#ixzz38micyHkJ>, last visited Sept. 15, 2014.

Committee reportedly issued a statement that the charter “does not take into consideration the cultural and religious particularities of Arab people.”<sup>34</sup>

34. Also in March 2013, the Grand Mufti reportedly called on the Government to prohibit Libyan women from marrying foreign men.<sup>35</sup> The next month, the Ministry of Social Affairs stopped issuing marriage licenses to Libyan women seeking to marry foreigners. The Grand Mufti then called for gender segregation at universities and offices, saying a mixed gender environment “encourages unethical behavior.”<sup>36</sup>

**35. Suggested Recommendations:**

- Develop a public education campaign to eliminate discriminatory attitudes toward women and the perception that discrimination against women is religiously acceptable by making use of radio discussion programs, television soap operas, and panel discussions; as part of the campaign target religious leaders in particular and men in general to combat the persistent negative stereotypes about women with respect to employment, politics, and other public affairs.
- Fully enforce the prohibition on gender discrimination in Law No. 10 of 2013 and give Libyan women the liberty to marry the men of their choice.
- Ensure that any proffered contradictions between Islam and Libya’s international human rights obligations are reconciled in favour of those human rights obligations.

36. In February 2013, Libya’s Supreme Court overturned the provision in Law No.10 of 1984 which stipulated that a husband must obtain the consent of his current wife before marrying a second wife. The court ruled that this law is inconsistent with Islamic law and the provision in the Constitutional Declaration recognising Islamic law as the principal source of legislation.<sup>37</sup>

**37. Suggested Recommendation:**

- Abrogate the decision of the Supreme Court overturning the provision in Law No. 10 of 1984 that requires that a husband obtain a court order and the consent of his current wife before marrying a second wife.

**C. Women Human Rights Defenders Face Escalating Threats to Their Security.**

38. Amid a degrading security situation, women’s rights activists have been increasingly harassed, intimidated, attacked, and even killed by militias and armed groups. The killings of human rights activist and lawyer Salwa Bugaighis on June 25, 2014, and

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<sup>34</sup> See Christian Science Monitor, Mar. 14, 2013, cited in: IRB - Immigration and Refugee Board of Canada: Libya: *Domestic violence, including legislation, state protection and support services* (Nov. 2013) Research Directorate, Immigration and Refugee Board of Canada, Ottawa [LBY104667.E], Nov. 27, 2013, available at [http://www.ecoi.net/local\\_link/265601/379544\\_en.html](http://www.ecoi.net/local_link/265601/379544_en.html), last visited July 28, 2014.

<sup>35</sup> See *Ban Libyan Women from Marrying Foreigners: Grand Mufti*, Libya Herald, Mar. 31, 2013, available at <http://www.libyaherald.com/2013/03/31/ban-libyan-women-from-marrying-foreigners-grand-mufti/#axzz38meYs5Sf>, last visited July 28, 2014.

<sup>36</sup> See Ashaf Abdul-Wahab, *Grand Mufti Calls for end to Mixed Gender Education and Employment*, Libya Herald, Apr. 25, 2013, available at <http://www.libyaherald.com/2013/03/31/ban-libyan-women-from-marrying-foreigners-grand-mufti/#axzz38meYs5Sf>, last visited July 28, 2014.

<sup>37</sup> See Hisham Munawar, *Women’s Rights Still Lacking in Libya*, Al-Monitor, Nov. 25, 2013, available at <http://www.al-monitor.com/pulse/culture/2013/11/libya-revolution-women-rights.html>, last visited Sept. 15, 2014.

Fariha Al Berkawi, former GNC representative from Derna, on July 17, 2014, demonstrate the intensity of threats against women who speak out.<sup>38</sup> Bugaighis reportedly received a number of threats in relation to her public appearances, political activism, and role in promoting women's rights, before she was killed in her home in Benghazi.<sup>39</sup> Al-Barqawi, a prominent voice in the liberal-leaning bloc in Libya, is believed to have been killed by militias who control the city of Derna.<sup>40</sup> Reports indicate that police and military forces have abandoned Derna because they lack sufficient means to face armed elements there.<sup>41</sup>

39. Extremist groups have targeted women for violating social norms, such as by not wearing a veil or dressing in a way deemed inappropriate. Many women report receiving threats, including death threats, via text message and social media.<sup>42</sup> In February 2013, powerful militia leaders publicly criticized organizers of small protests in Tripoli and Benghazi calling for equality and condemning sexual harassment and violence against women and threatened to force them to discontinue their public activism.<sup>43</sup>

40. The degrading security situation has a negative effect on women's freedom of movement. A nationwide survey shows that women in Libya are quite restricted in their freedom of movement; a majority of respondents say they are unable to leave their house without permission.<sup>44</sup>

**41. Suggested Recommendation:**

- Take active measures to ensure the security of women human rights defenders, activists, and politicians, and to ensure that women's rights activists are able to organize and assemble to express their views.
- Conduct an independent and thorough investigation into the murders of women human rights defenders and ensure that the perpetrators are held accountable.
- Step up security efforts designed to enhance the safety and security of women so that they are able to move freely throughout the country.

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<sup>38</sup> See Lawyers for Justice in Libya, *LFJL pays its respect to women's rights activist Salwa Bugaighis following her tragic murder*, June 26, 2014, available at: <http://www.libyanjustice.org/news/news/post/145-lfjl-pays-its-respect-to-womens-rights-activist-salwa-bugaighis-following-her-tragic-murder>, last visited Aug. 1, 2014.

<sup>39</sup> See *Libya: fears that yesterday's killing of human rights lawyer Salwa Bugaighis was targeted*, Amnesty International UK Press Release, June 26, 2014, available at <http://www.amnesty.org.uk/press-releases/libya-fears-yesterdays-killing-human-rights-lawyer-salwa-bugaighis-was-targeted>, last visited Sept. 1, 2014.

<sup>40</sup> *Former Derna Congresswoman Murdered*, Libya Herald, July 17, 2014, available at <http://www.libyaherald.com/2014/07/17/former-derna-congresswomen-murdered/#axzz3D1jMQ6LT>, last visited Sept. 1, 2014.

<sup>41</sup> See *Assassination of Former Member of Congress Highlights Persistent Instability in Derna*, HTH Worldwide News, July 18, 2014, available at [http://www.hthworldwide.com/health\\_sec\\_news/newsalerts\\_article.cfm?arId=13464](http://www.hthworldwide.com/health_sec_news/newsalerts_article.cfm?arId=13464), last visited Sept. 15, 2014.

<sup>42</sup> Amnesty International, *supra* note 39.

<sup>43</sup> Amnesty International, *Annual Report 2013: Libya*, available at: <http://www.amnesty.org/en/region/libya/report-2013>, last visited Sept. 1, 2014.

<sup>44</sup> See IFES, *supra* note 1.

## **D. Women Are Subject to Political, Economic, and Social Discrimination.**

### Political Participation

42. Women played active roles in the 2011 revolution but their roles have not translated into increased political representation. The NTC formed in 2011 had only 2 women in the 40-member Council until the end of the revolution.<sup>45</sup> In the lead-up to the GNC elections, women’s groups campaigned for a quota for women in the GNC. The proposed electoral draft law issued in January 2012 allocated a ten percent quota to women. The proposal was rejected and the electoral law established gender parity in the political party candidate lists through a “zipper list.” 600 women ran in the July 2012 elections to elect a 200-member GNC. Although 33 women were elected, the government formed after the elections included only 2 of those 33 women.<sup>46</sup> Both women were selected for junior positions in tourism and social affairs. The election results show some progress in women’s political participation, but the decisions of the government demonstrate that attitudes about the role of women in public life have not changed substantially.
43. The GNC passed Constitutional Amendment No. 3, which stipulates that the 60-member constitutional drafting committee should be chosen in a general election. Women’s rights groups campaigned for a requirement that women comprise at least 30% of the committee, yet the law allocated only 6 seats to women.<sup>47</sup> Meaningful participation in politics is further limited by restrictive social norms. NGOs reported that a woman giving a speech at the GNC was removed from the chamber for not wearing a headscarf.<sup>48</sup>

#### **44. Suggested Recommendations:**

- Incorporate a quota system in the electoral law requiring that women comprise at least 30% of any elected body so as to ensure women are fairly represented in politics.
- Establish nationwide programs including training institutions to recruit, encourage, train, and support women who wish to run for elected office.
- Introduce policies designed to enhance the appointment of qualified women to senior positions in the General People’s Congress with the aim of expanding the roles of women beyond traditional ministries like tourism and social affairs.
- In cooperation with civil society, develop and implement a comprehensive voter education campaign targeting female voters.

### Employment

45. A 2013 nationwide survey demonstrates that there is no significant gender gap in higher education. 32% of women and 33% of men hold a university degree or higher. Women’s participation in the labor force, however, is significantly lower than men, with 43% of women reporting work for pay compared with 66% of men. The data indicate a significant difference in earned incomes between men and women who work for pay and who hold a university degree. Sixty-seven percent of men in this category earn LYD 701

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<sup>45</sup> Munawar, *supra* note 37.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Pargeter, *supra* note 8, at 13.

(\$547 USD) or more per month, compared to only thirty-eight percent of women who fall in this income bracket. Sixty percent of women who work and hold a university education or higher make less than LYD 700 (\$546 USD) per month. Fewer women (71%) than men (89%) consider themselves completely free in deciding how their earnings are used.<sup>49</sup>

46. In addition to the explicit provisions in Articles 95 and 96 of Labor Law No. 58 of 1970, discussed in paragraph 24 above, that impede women’s full participation in the workforce, implicit social constraints also prevent women from participating fully in the workforce. Men pressure female family members to work in jobs that are closer to home and keep them segregated from other men. Women also face pervasive sexual harassment at the workplace.<sup>50</sup> These constraints severely limit the job options available to Libyan women.

**47. Suggested Recommendations:**

- Ensure that employers adopt administrative policies to promote women’s participation in the work force and strictly enforce sanctions against sexual harassment.
- Ensure that women receive pay equal to pay that men receive for comparable work.

**E. Women and Girls are Indefinitely Detained Without Judicial Review and Subjected to Gender-Based Violence in Detention.**

48. Libyan women are detained against their will in so-called social rehabilitation centers. The mandate of these centers is to provide housing for “women who are vulnerable to engaging in moral misconduct.”<sup>51</sup> The bylaw establishing the centers recognizes the following categories of women and girls to be detained: “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>52</sup>

49. In 2009, in its reply to the CEDAW Committee’s List of Issues, the Libyan Government justified the use of these detention facilities, stating that “social welfare homes accommodate women who no longer have the means for a life of dignity and have no protection, no family to live with and no shelter.”<sup>53</sup>

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<sup>49</sup> IFES, *supra* note 1; see also, Stinson Leonard Street Memorandum, Aug. 2014, on file with The Advocates for Human Rights.

<sup>50</sup> Pargeter, *supra* note 8, at 18.

<sup>51</sup> See Human Rights Watch, *Libya: A Threat to Society?: Arbitrary Detention of Women and Girls for “Social Rehabilitation,”* Feb. 28, 2006, available at <http://www.hrw.org/sites/default/files/reports/libya0206webwcover.pdf>, last visited Aug. 20, 2014.

<sup>52</sup> *Id.*

<sup>53</sup> Libyan Government’s reply to the CEDAW Committee’s List of Issues, UN Doc. CEDAW/C/LBY/Q/2/Add.1, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLBY%2fQ%2f2%2fAdd.1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLBY%2fQ%2f2%2fAdd.1&Lang=en), last visited Aug. 4, 2014.

50. Reports indicate that the public prosecutor transfers women to these facilities and that women are often detained against their will.<sup>54</sup> Detainees have no mechanisms to appeal their transfer or challenge their confinement, and there is no prescribed limit to the period of detention.<sup>55</sup> The facilities have been described as “de facto prison”<sup>56</sup> where women are forced to have “invasive virginity examinations.”<sup>57</sup> The CEDAW Committee has noted that occupants of these facilities are victims of gender-based violence.<sup>58</sup>

51. In 2012, the Ministry of Social Affairs confirmed that the centres are still in operation and that they are used to detain young women with family problems, divorcees, minors who had committed crimes and who had been diverted from prison, pregnant women out of wedlock, and others.<sup>59</sup> The use of these centers has been described as tantamount to “arbitrary arrest and detention.”<sup>60</sup>

**52. Suggested Recommendation:**

- Abolish the use of social rehabilitation centers, immediately release all women and girls currently being held in these centers, and transform existing facilities to safe homes and shelters available to all vulnerable women and girls on a strictly voluntary basis, and ensure that these facilities provide job training, childcare, support, counselling, and other services for vulnerable women and girls.

**III. Suggested Recommendations**

53. The Advocates and MRA offer the following recommendations for the Libyan Government:

**The Penal Code**

- Amend the Penal Code to clarify the definition of sexual violence as a crime against a woman as an individual and not against her honor.
- Eliminate the provision in Article 424 of the Penal Code which allows the perpetrator of rape to escape punishment if the victim agrees to marry him and ensure that all perpetrators of rape face the same punishment provided by law.
- Amend Articles 407 and 408 of the Penal Code and repeal Law No. 70 of 1973 to decriminalize sexual relations between consenting adults and ensure that victims of sexual assault do not face the risk of criminal prosecution.
- Criminalize spousal rape and implement a public education and awareness-raising campaign about the law.

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<sup>54</sup> Human Rights Watch, *supra* note 6, at 29, 6 n. 53.

<sup>55</sup> Pargeter, *supra* note 8, at 6.

<sup>56</sup> Human Rights Watch, *supra* note 6, at 29.

<sup>57</sup> Pargeter, *supra* note 8, at 6.

<sup>58</sup> CEDAW Committee, “*Concluding observations of the Committee on the Elimination of Discrimination against Women, Libyan Arab Jamahiriya*,” UN Doc. CEDAW/C/LBY/CO/5, Feb. 6, 2009, ¶ 23.

<sup>59</sup> Human Rights Watch, *supra* note 6, at 29.

<sup>60</sup> Luis Martinez, Freedom House, *Countries at a Crossroad: Libya* (2011), at 7; Human Rights Watch, *supra* note 51.

- Amend Article 375 to ensure that a man who kills or causes injury to a woman does not receive a reduced sentence for citing honour as the motivating factor, and that sanctions are commensurate with the severity of the offence.

### **Domestic Violence**

- Adopt comprehensive domestic violence legislation with both civil and criminal provisions, including provision to punish the perpetrator, ensure that the prohibitions and punishments are enforced effectively, and provide protection for the victim.
- Exclude the application of Article 63 of the Penal Code (requiring proof of physical violence for assault) in cases involving domestic violence; in order to remove the undue evidentiary burden on women.
- Provide training to police officers, prosecutors, and judges on effective implementation of the law and gender sensitivity.
- Launch awareness campaigns on domestic violence through radio discussion programs, television soap operas, panel discussions, and community sensitization events to overcome societal resistance to discussing violence against women and to mainstream a culture of reporting violence.
- Define psychological harm in Article 17(c) of Law No. 10 of 1984 to include coercive control, which does not necessarily cause physical injury but deprives a woman of freedom in her personal, social, economic and political life, and ensure that Libya’s domestic violence laws address aspects of the emotional and physical abuse, as well as the exposure of family privacy, that often accompanies domestic violence cases.

### **Nationality**

- Amend Article 3 of Law No. 24 of 2010 to clarify that children born to a Libyan mother and a father who has a nationality other than Libyan are eligible for Libyan citizenship.

### **Labor Law**

- Repeal Articles 95 and 96 of Labor Law No. 58 of 1970 to allow the full enjoyment of the legal guarantee in the Consolidation of Freedoms Law No. 20 of 1991.

### **Draft Law on Rape and Violence against Women and Special Procedures Law**

- Ensure that the Draft bill on Rape and Violence against Women is passed into law and repeal provisions of Special Procedures Law No. 38 of 2012 that would grant immunity for gender-based violence, and ensure that all perpetrators of gender-based violence during the 2011 conflict are brought to justice.
- Open resource centers and shelters throughout the country to provide support and services to victims of sexual assault, rape, and other forms of gender-based violence.
- Develop and implement a scheme to protect and compensate victims of gender-based violence, especially rape.

### **Religious and Social Discrimination against Women**

- Repeal Law No. 15 and ensure media freedom to discuss and criticize all government policies and laws, including opinions of the Dar al-Ifta.
- Develop a public education campaign to eliminate discriminatory attitudes toward women and the perception that discrimination against women is religiously acceptable by making use of radio discussion programs, television soap operas, and panel discussions; as part of the campaign target religious leaders in particular and men in general to combat the persistent negative stereotypes about women with respect to employment, politics, and other public affairs.
- Fully enforce the prohibition on gender discrimination in Law No. 10 of 2013 and give Libyan women the liberty to marry the men of their choice.
- Ensure that any proffered contradictions between Islam and Libya’s international human rights obligations are reconciled in favour of those human rights obligations.
- Abrogate the decision of the Supreme Court overturning the provision in Law No. 10 of 1984 that requires that a husband obtain a court order and the consent of his current wife before marrying a second wife.

### **Unlawful Killings and Violence against Women Human Rights Defenders**

- Take active measures to ensure the security of women human rights defenders, activists, and politicians, and to ensure that women’s rights activists are able to organize and assemble to express their views.
- Conduct an independent and thorough investigation into the murders of women human rights defenders and ensure that the perpetrators are held accountable.
- Step up security efforts designed to enhance the safety and security of women so that they are able to move freely throughout the country.

### **Discrimination in political participation**

- Incorporate a quota system in the electoral law requiring that women comprise at least 30% of any elected body so as to ensure women are fairly represented in politics.
- Establish nationwide programs including training institutions to recruit, encourage, train, and support women who wish to run for elected office.
- Introduce policies designed to enhance the appointment of qualified women to senior positions in the General People’s Congress with the aim of expanding the roles of women beyond traditional ministries like tourism and social affairs.
- In cooperation with civil society, develop and implement a comprehensive voter education campaign targeting female voters.



**Discrimination in the work force**

- Ensure that employers adopt administrative policies to promote women’s participation in the work force and strictly enforce sanctions against sexual harassment.
- Ensure that women receive pay equal to pay that men receive for comparable work.

**Indefinite detention of women and girls**

- Abolish the use of social rehabilitation centers, immediately release all women and girls currently being held in these centers, and transform existing facilities to safe homes and shelters available to all vulnerable women and girls on a strictly voluntary basis, and ensure that these facilities provide job training, childcare, support, counselling, and other services for vulnerable women and girls.