



Stakeholder Report to the United Nations Human Rights Council Universal Periodic Review- Libya

Women's Rights

Submitted by *Al Nissa Qadimat* Movement (the Women Are Coming Movement)

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Key Concerns

- Throughout the last four years, limited efforts have been made by the Libyan state to ensure that women's rights are protected. No adequate safeguards or laws have been implemented to ensure equality. Women continue to be inadequately protected in both private and public life.
- The state has failed to take substantive measures to promote equal political participation.
- No adequate effort has been made by the state to remove discriminatory laws in relation to domestic and sexual abuse in Libya. There are no sufficient mechanisms for women to seek reparations and or refuge provisions for women subject to abuse.
- The Libyan Penal Code enables certain forms of abuse to be committed against women.
- Women continue to be denied equal personal status rights. In particular discrimination is evident in relation to marriage and divorce.
- Women are denied full access to citizenship rights. In particular women who are married to non-Libyans are denied the right to confer citizenship on their children.

Introduction

1. This stakeholder report is a submission by *Al Nissa Qadimat* Movement (the Women Are Coming Movement) (NQM). NQM is a Libyan organization established to promote women's rights to be enshrined in the constitution and protected in laws, to end violence against women, to end all types of discrimination against women and believes in the complete equality between men and women. NQM wishes to highlight key concerns affecting the rights of women before the Human Rights Council for consideration in Libya's upcoming Universal Periodic Review (UPR).

2. Although the Libyan state gave its support to the majority of the recommendations, related to rights of women, during the last UPR session on Libya, this has not led to

the realisation of any adequate guarantees. While the radical political change in Libya has already provided some opportunities to reshape the legal and social status of women, the gains made to date remain fragile and must be rapidly bolstered by clear legislative guarantees and effective law enforcement mechanisms.

3. Recommendation 93.20 in the Report of the Working Group on the Universal Periodic Review (**UPR Report**) provides an overarching recommendation for Libya to “adopt policies and legislation aimed at promoting women’s rights and combatting gender-based discrimination.” Such measures have yet to be implemented. Indeed, of the 14 women specific recommendations which enjoyed Libya’s support, none has been adequately implemented. As a result, women’s rights remain inadequately protected in both the public and private sphere. In particular, this has contributed to women being underrepresented in government and politics, subjected to domestic and sexual violence, and facing inequality with respect to personal status and citizenship rights. The following report discusses each of these key issues in turn.

Underrepresentation of Women in Government and Politics

4. The Libyan state has failed to implement substantive changes on the basis of UPR recommendation 93.26 to “strengthen measures and policies to promote the active role and participation of women in the political, social and economic life of the country” or recommendation 93.33 to “continue to take practical measures to ensure the effective participation of women in economic, social and political fields.”

5. Although women represent 49% of the Libyan population, the participation of women in the political sphere has remained extremely low over the past three years. This is in contrast to Libya’s obligations under international law, which require the state to ensure that women are able to participate on equal terms with men, as outlined in Article 7 of the Convention on the Elimination of All Forms of Discrimination Against Women (**CEDAW**) and Article 25 of the International Covenant on Civil and Political Rights (**ICCPR**).

6. Libya’s first elected transitional body, the General National Congress (**GNC**), was composed of 200 seats. 33 women members were elected to this body. Although the GNC electoral law, Law 4 of 2012, included provisions to encourage the increased representation of women in government, it was insufficient to ensure adequate representation with merely 17% of the total seats allocated to women. The law introduced a party list-based system and gender quotas. As well as this, it implemented the use of ‘zippering’, listing candidates in an alternating manner on the basis of sex. This system resulted in women winning 32 seats through political party lists. However, the fact that only one woman was elected as an independent candidate highlights the extent of the challenges faced by female candidates and the need for stronger efforts by the state to increase their participation.

7. The Libyan legislature did not build upon the initial standard set by the GNC electoral law and, as a result, subsequent elections have failed to ensure greater representation or participation for women. During the Constitutional Drafting Assembly (**CDA**) elections, only 64 candidates were women of a total of the 649 (10.1%). This was a significant decrease from the 585 women who registered as candidates during the GNC elections and made up 15.5% of total candidates. Not a

single woman during the CDA elections was able to secure a seat through the open list and, as a result, women's representation in the constitutional drafting process was limited to just the six reserved seats.

8. More recently, the state once again failed to encourage greater representation in the House of Representatives elections with legislative efforts failing to address the shortcomings of the CDA elections. Female representation in the House of Representatives only accounts for 15% and is a step back from the 17% of seats secured during the GNC elections. Furthermore, election Law 10 of 2014 excluded parties from running, which further reduced the likelihood of women securing representation. Women were once again only provided an extremely limited 16% quota. However, due to the violence which disrupted some of the election polls, only 30 women were elected, rather than the 32 envisaged in the election law. This has meant that women's representation has been limited to its current level of 15%.

9. Women remain absent from all senior positions in the Libyan government. Upon the formation of the GNC in 2012 only two women were appointed to the 27-minister cabinet and both for relatively junior posts, namely the minister of tourism and minister of social affairs. Most recently, the new government, which was formed on 28 September 2012, has no women in its cabinet. The assignment of roles with limited or nominal influence has further limited the representation of women in government.

Domestic and Sexual Violence

10. The Libyan state has failed to address discriminatory laws that encourage violence against women contrary to the supported recommendation 93.36 which encouraged the state "to take comprehensive measures to eliminate violence against women and children, in particular by adopting a national strategy to combat violence against women, as recommended by the Committee on the Elimination of Discrimination against Women." Addressed in the Concluding Observations of the CEDAW in 2009 the recommendation aimed to "bring about change in the widely accepted stereotypical roles of women and men and the equal status and responsibility of women and men in the private and public sphere."

11. Women are disproportionately affected by domestic and sexual violence in Libya. Conservative societal attitudes and fear of stigmatisation often deter women who have suffered from bringing action. Inability of the state to overcome societal obstacles is further hindered by the failure to enact laws and remedies for women. There are no mechanisms for women to seek reparations, or facilities to provide refuge.

12. Libya's Penal Code of 1953 is particularly problematic in its classification of sexual violence as a crime against 'a woman's honour', rather than against her personhood. This is dangerous as it could point towards marital rape being legal if the focus continues to be on honour rather than the physical crime committed.

13. This approach enshrines the notion that sexual violence is only reprehensible because of its effect of tarnishing a woman's character or societal 'worth'. The law

encourages stigmatization of women who are survivors of such crimes because of the societal burden that comes with having their ‘honour’ breached. This leads to the revictimisation of the women concerned. Furthermore, such reference to honour makes character and sexual history a decisive factor in legal proceedings which is likely to be actively discussed by the prosecution. This has a further discouraging impact on those who may wish to seek redress in the law.

14. The Libyan state has failed to address domestic violence. For example, Law 10 of 1984 states that a woman “has the right to expect her husband to ... refrain from causing her physical or psychological harm.” This extremely weak language is ambiguous as to what degree of refrainment one can expect. The law also provides no enforcement mechanism to achieve what limited protection this law may be able to offer.

15. Libya’s *zina* (adultery) law, as codified in Law 70 of 1973, is also problematic in its treatment of women. The law criminalises extramarital sexual relations, including adultery and fornication. The text of the law fails to distinguish adequately between forced and consensual sex. As a result, those who have been subject to sexual assault can be prosecuted under these laws. This discourages individuals from pressing charges or seeking legal redress for crimes such as rape, as it can place the burden of proof upon the victim to show that they did not consent to engaging in unlawful extramarital sexual relations.

16. No public trials have taken place in relation to the reported sexual violence that was committed during the Libyan conflict in 2011. Civil society organisations during the time of the conflict reported cases of sexual violence and the use of rape as a form of punishment by fighters from all sides to the conflict.

17. On 19 February 2014, the then Libyan Minister of Justice, Salah El Marghany, adopted a decree which offers support to survivors of sexual violence during the conflict and the previous administration. Although this was a positive step, the Libyan government has yet to demonstrate its commitment by adopting the text as a statute. In addition, no procedures have been put in place to enable victims to seek reparation.

Inequality with Respect to Personal Status

Marriage

18. The state has failed to ensure that laws relating to personal status do not discriminate against women and has failed to repeal laws which are discriminatory in respect of marriage, divorce, and inheritance.

19. Law 10 of 1984 describes different rights in marriage. Article 17 of that law provides that a woman has the right to expect her husband to do the following:

- a) To provide maintenance and associated expenses within the limits of the husband’s means in accordance with the provisions of that law;
- b) To permit her to dispose freely of her own wealth as she sees fit;
- c) To refrain from causing her physical or psychological harm.

20. Article 18 of the law provides that a man has the right to expect his wife to do the following:

- a) To provide maintenance and associated expenses if the wife has means and the husband does not, in accordance with the provisions of that law;
- b) To attend to his comfort and physical and psycho- logical well-being;
- c) To supervise, organize and maintain the marital home;
- d) To nurse, raise and protect their children, unless medically unfit to do so;
- e) To refrain from causing him physical or psychological harm.

21. There is no justification for distinguishing marital responsibilities on the basis of gender. The existence of such legal disparity is contrary to Libya's obligations under Article 16 of CEDAW, which stipulates that men and women should have the "same rights and responsibilities during marriage and its dissolution." This is also contrary to the first half of recommendation 93.22 which states that Libya should "continue its efforts in promoting human rights and gender equality."

Polygamy

22. On 5 February 2013, the Constitutional Chamber of the Supreme Court ruled that Libya's laws which required a husband to obtain the consent of any current wife before marrying again contradicted Libya's Constitutional Declaration and that polygamy should not be restricted. This mirrored a speech previously made by Mustafa Abdeljalil, the former head of the National Transitional Council, who called for the removal of restrictions on polygamy. However, the UN Human Rights Committee (**the Committee**) and CEDAW requires states to ensure equal rights in marriage and to prohibit discrimination in law. Indeed, the Committee declared that "polygamy violates the dignity of women" and "is an inadmissible discrimination against women" which "should be definitely abolished wherever it continues to exist." Similarly, CEDAW has declared that "polygamous marriage contravenes a woman's right to equality with men."

Citizenship rights

23. Libya's nationality law, Law 24 of 2010, remains ambiguous with respect to the ability of women to confer their nationality on their children if their husbands are non-nationals. Libyan men, by contrast, are able to confer their nationality on their children irrespective of the nationality of their wives. This is in violation of Libya's obligations under CEDAW Article 9 to grant women equal rights with men with respect to the nationality of their children.

24. On 31 March 2013, Libya's Grand Mufti, Sheikh Sadeq Al-Ghariyani, issued fatwa number 1587 demanding the suspension of marriage licenses for Libyan women who intended to marry foreign men. The fatwa was implemented on *ad hoc* basis by marital registrars in clear violation to Libya's obligations under Article 2 of CEDAW.