



HUMAN  
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# A REVOLUTION FOR ALL

Women's Rights in the New Libya



# **A Revolution for All**

## **Women's Rights in the New Libya**

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Printed in the United States of America

ISBN: 978-1-62313-0114

Cover design by Rafael Jimenez

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MAY 2013

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## Summary

Libyans are in the midst of dramatic change, trying to build a new political system after 42 years of dictatorship. The challenges to build a more rights-respecting state based on the rule of law are significant.

For Libyan women, the stakes are high. Many women played important roles in the uprising that led to the overthrow of Muammar Gaddafi and have contributed to the political transition, including as members in the new parliament. Now concrete steps are urgently needed to ensure that women's rights are respected in the new Libya and that discrimination based on gender is firmly rejected by law.

This report presents four key issues that Libya should address to help secure women's rights. Failure to deal with these issues properly will set back the progress women have made over the past two years, and hinder respect for women's rights in the future. Now is the time to ensure that women can participate actively in the political process and that women's rights are enshrined in Libyan law.

First, Libya's parliament, the General National Congress, should ensure that women can participate on equal terms with men in the Constituent Assembly and the rest of the constitution drafting process. Women's voices are critical to prepare a constitution that meets international standards for women's rights.

Second, the future constitution should guarantee full equality between men and women with an explicit reference to gender equality in its text. The constitution should make clear that its provisions on equality override any law. As noted in the Convention to Eliminate Discrimination Against Women and other relevant international instruments to which Libya is party, equality before the law requires that men and women are afforded equal rights in regard to legal capacities, including access to legal remedies and due process.

The new constitution should also explicitly prohibit discrimination based on gender, sex, pregnancy, and marital status, among other categories. It should require the legislature to pass laws that prevent and prohibit discrimination by state and private parties, allow courts to strike down discriminatory policies, and give those affected by it an effective remedy.

Third, the GNC and future parliaments should repeal or amend Gaddafi-era laws and regulations that subject women to discrimination and abuse, including gender-specific violence, unequal personal status laws, and an ambiguous nationality law. For example, the current penal code classifies sexual violence as a “crime against a woman’s honor,” rather than against the woman as a victim or as a violation of her bodily integrity. Article 375 of the penal code contains less severe criminal sentencing for perpetrators of so-called honor crimes. Law No. 70 (1973) on *zina* (adultery and fornication) discourages victims of sexual assault from seeking justice.

Fourth, the Libyan government and GNC should work to end discrimination against women in all aspects of the country’s public and political life, end impunity for violence and domestic violence against women, and challenge negative stereotypes of women.

While the enormous political change in Libya has already provided unprecedented opportunities to reshape the legal and social status of women in Libya, including with regard to their full and meaningful participation in politics, the gains made to date remain fragile and need to be rapidly bolstered by clear constitutional and legislative guarantees.

The Libyan government should provide leadership in adopting the measures above as part of its stated effort to promote human rights for everyone in Libya.

## I. Background

On the eve of Libya's first democratic national elections in July 2012, Haja Nowara held a lonely vigil in the square outside the courthouse in Benghazi, where she had spent many evenings supporting the revolution since early 2011. One of only a handful of women present, she was engulfed by a sea of men who had come to pray and to celebrate ahead of the historic event due to take place the next day. An elderly woman, Nowara proudly displayed her voter registration card around her neck and waved Libya's new flag while people approached her to pay their respects. She had become an icon due to her steadfast participation in the protests that started the revolt against Muammar Gaddafi.

"I have waited my whole life for tomorrow, which will be a new day for Libya," said Nowara, who would be voting for the first time in her life.<sup>1</sup> "We sacrificed a lot to get here. Although I didn't lose any of my own children during the war, I've come back [to the square] to honor all the martyrs, who are my children as well."<sup>2</sup>

For many Libyans, the July 7 elections marked the end of a long and difficult chapter in their lives and the start of a more hopeful era. Libyans had much to celebrate, not least organizing an election at a frantic pace that, despite some violence, was widely seen as free and fair. But women's rights activists in the country told Human Rights Watch that, for them, the real work would begin once the celebrations had concluded. In their view, women's groups must remain vigilant and face the challenge of protecting the gains they had achieved, especially considering the high stakes involved in drafting a new constitution in a country in which deep divisions remain.

Libya's women, however, are accustomed to facing challenges. Despite the social pressures on some women to refrain from political participation, many women played a crucial role in the protests that began in Benghazi in February 2011 and then sparked the uprising that led to Gaddafi's fall. They helped organize demonstrations, they documented

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<sup>1</sup> Human Rights Watch interview with Haja Nowara, Benghazi, July 6, 2012.

<sup>2</sup> On February 15, 2011, two days before major anti-government protests were planned, security forces arrested two human rights activists, inspiring more than 500 predominantly female demonstrators to rally outside of police headquarters. Security forces fired into the crowd after clashes between protesters and police. Protests spread across Libya, and security forces used lethal force on crowds. The crackdown escalated into an internal armed conflict as Libyans took up arms against forces in the east, in the Nafusa Mountain region, and in Misrata.

human rights abuses, and they circulated information through social media. As the conflict intensified, Libyan women provided medical, logistical, and other support to opposition armed groups, including smuggling ammunition and feeding fighters.<sup>3</sup>

Iman and Selwa Bugaighis, sisters and respectively a human rights activist and lawyer in Benghazi, were among the key organizers of the protests from the first demonstrations in February 2011. “The revolution was an earthquake to the cultural status of women in Libya,” Iman told Human Rights Watch.<sup>4</sup> “We don’t want to lose what we’ve gained as Libyan women.” Selwa echoed this view: “We had never participated before in protests, these were taboo. The revolution made us proud to be there on the front line and men were forced to accept us. But now there are some who think it is time for women to go home.”

Women’s more visible role in society did not end with the overthrow of Gaddafi. In the days before the July 2012 election, campaign posters displaying faces of female candidates adorned public spaces in Tripoli, Benghazi, and elsewhere. Some were vandalized, but their display was noteworthy in so conservative a society. More than 600 women registered as candidates and some of them actively campaigned in cities and towns, even venturing out during the evenings to hand out election brochures and speak with voters. Women represented 45 percent of registered voters, though the voter turnout for women – 39 percent – was significantly lower than for men. Ultimately, voters elected 33 women to the 200-member GNC.

The active and visible participation of women in the election challenged society’s stereotypical view of women’s marginal role in Libyan politics, and could mark the beginning of a greater role for women in the governance of the country.

Despite the gains, Libyan women continue to face significant challenges. As in other post-conflict situations, they face an array of obstacles to their full participation in the country’s

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<sup>3</sup> Chris Stephen, Irina Kalashnikova, and David Smith, “Libyan women: it’s our revolution too”, *The Guardian*, September 16, 2011, <http://www.guardian.co.uk/world/2011/sep/16/libyan-women-our-revolution-too> (accessed March 23, 2013); Sarah Birke, “The women fighting, organising, feeding and healing Libya’s revolution,” *The National*, March 25, 2011, <http://www.thenational.ae/news/world/africa/the-women-fighting-organising-feeding-and-healing-libya-s-revolution#ixzz2N92g759q> (accessed March 23, 2013); United States Institute of Peace (Washington), “Stakeholders of Libya’s February 17 Revolution,” Special Report 300, January 2012, <http://www.usip.org/files/resources/SR%20300.pdf> (accessed March 23, 2013).

<sup>4</sup> Human Rights Watch interview with Iman and Selwa Bugaighis, Benghazi, July 3, 2012.

transitional processes. Libyan women generally have inferior access to information, they experience higher rates of illiteracy than men, they face discrimination in both accessing employment and at the workplace, they have restricted mobility, and they are liable to sexual harassment and assault. Furthermore they live in a society where men's control over women's decision-making is entrenched and which prioritizes women's role as that of mothers and wives.

In June and July 2012, Human Rights Watch observed the election process and interviewed more than 50 female candidates and voters, women's rights activists, government and community leaders, as well as members of the judiciary in Tripoli, Benghazi, and Misrata, about issues pertaining to women. Since then Human Rights Watch has continued to work with Libyan women's rights activists and to monitor and analyze political and legal developments affecting women. This report is based on that work.

In dozens of meetings, women parliamentary candidates, activists, academics, and others told Human Rights Watch that they will continue to stand up determinedly to defend and demand their human rights. They will need to do so, given the statements by some male political and religious leaders suggesting they will tolerate continued discrimination against women in both law and practice. For example some leaders have said that Libya should enact new laws that embody more conservative interpretations of Sharia, or Islamic law, including on polygamy. The fall of Gaddafi's government has enabled a wide spectrum of groups and parties to form, including those who oppose the full integration of international standards on women's rights into Libyan law.

The concerns of women's rights advocates seem to have been borne out early on. In October 2012, the newly appointed prime minister named two women—as ministers of tourism and social affairs—out of 33 ministers to the cabinet. In February 2013, Libya's Supreme Court effectively lifted some of the existing restrictions on polygamy. And in April 2013, the Ministry of Social Affairs reportedly suspended issuing marriage licenses for Libyan women marrying foreigners after Libya's Grand Mufti called on the government to ban women from marrying foreigners.

## II. Women's Political Participation

### The Right to Participate

Legal reforms over the past several decades put Libya ahead of many countries in the Middle East and North Africa in terms of formal gender equality. But, under Gaddafi, the rights of everyone to political participation fell far short of international standards as set out under the International Covenant on Civil and Political Rights (ICCPR).<sup>5</sup> Article 25 provides that every citizen without discrimination shall have the right and the opportunity to “take part in the conduct of public affairs,” “be elected at genuine periodic elections,” and “have access, on general terms of equality, to public service” in their country.<sup>6</sup>

Restrictions on women's participation in politics were not only found in legal prohibitions, but primarily in social and cultural obstacles and pressures. Libyan women historically had very few opportunities to rise to positions of political leadership and decision-making. Politics was generally seen as “no place for a woman,” and many families discouraged participation in public life in order to “protect honor, dignity, and marriageability,” according to women's rights activists.<sup>7</sup> As a result, there are few role models for women who aspire to political leadership. Female candidates for political office told Human Rights Watch that one of the challenges they faced is the perception—held by men and women—that women are incapable of assuming positions of leadership.

The 2012 national elections for the General National Congress marked a step away from that paradigm. Human Rights Watch observed that many women mobilized around the issue of their meaningful participation in Libya's first democratic elections. In late 2011, women's groups advocated<sup>8</sup> to increase women's political representation, including

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<sup>5</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> (accessed March 23, 2013), ratified by Libya on May 15, 1970. Libya has also ratified the Optional Protocol to the ICCPR, which allows for individuals to submit complaints to the Human Rights Committee detailing alleged violations of the Covenant by States parties. (Optional Protocol to the International Covenant on Civil and Political Rights, adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc A/6316 (1966), 999 U.N.T.S. 302, entered into force March 23, 1976, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx> (accessed March 23, 2013), ratified by Libya on May 16, 1989

<sup>6</sup>ICCPR, art. 25.

<sup>7</sup>Human Rights Watch interview with a group of Libyan women's rights activists, Tripoli, June 30, 2012.

<sup>8</sup> Caroline Hawley, “Libyan women battle for empowerment,” *BBC News Online*, December 13, 2011, <http://www.bbc.co.uk/news/world-africa-16160671> (accessed March 23, 2013); Oliver Holmes, “Libya drops election quota

campaigning for a 30- to 50-percent quota for women in the General National Congress.<sup>9</sup> In the end, the electoral law was revised to include a gender parity provision requiring each party to place its female candidates in an alternating pattern with male candidates on their lists to ensure that women were elected to the GNC.<sup>10</sup>

The 2012 elections marked a significant increase in female political participation with more than 600 women registered as candidates. Thirty-three women were elected to the 200 member GNC.<sup>11</sup> Women's rights activists say they were happy to see women elected, but they expressed concern to Human Rights Watch that increased female political participation would not guarantee that a new constitution will protect women's rights and advance gender equality.

The Libyan government now needs to show its leadership to address the social and cultural impediments to women's full participation in political life even when their rights are legally and constitutionally guaranteed and protected.

The General National Congress should pay special attention to promoting women's full and free participation in future elections, particularly for the Constituent Assembly that will draft the constitution. The GNC should remove all legal discrimination against women and develop public awareness campaigns to promote women's right to participate on equal terms with men. The GNC should also encourage all political parties to include women in

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for women," *Reuters*, January 20, 2012, <http://www.reuters.com/article/2012/01/20/libya-women-idAFL6E8CK1SF20120120> (accessed March 23, 2013); "Women 4 Libya Say Draft Election Law Risks Failing Libyan Women," *The Tripoli Post*, January 20, 2012, <http://www.tripolipost.com/articledetail.asp?c=1&i=7711> (accessed March 23, 2013).

<sup>9</sup> The issue of percentages itself was confusing and preoccupied much of the debate. The initial draft electoral law wording was widely interpreted to state there would be maximum 10 percent seats for women, which, following debate and criticism, was then clarified to mean a 10 percent minimum.

<sup>10</sup> On February 7, 2012, the National Transitional Council, which served as Libya's interim parliament after the overthrow of Gaddafi until the election of the GNC in July 2012, adopted an electoral law that provided for a mixed parallel electoral system for the GNC elections. The electoral law required parties to list candidates alternately by sex including at the top of party lists; for multi-seat constituencies, every other candidate on a political entity list had to be a woman. Out of 200 seats, 80 seats would be elected through proportional races reserved for political or other groups (described as "political entities" in the electoral law). Female candidates ended up winning 32, or 40 percent, of the proportionally elected 80 seats for political entities. The remaining individual candidates vied for 120 independent seats that were elected by popular vote (majoritarian races); one woman was elected. "Libyans turn out to vote in landmark elections, women's role lauded," *United Nations Development Programme News*, July 10, 2012, <http://www.undp.org/content/undp/en/home/presscenter/articles/2012/07/10/libyans-turn-out-to-vote-in-landmark-elections-women-s-role-lauded.html> (accessed March 23, 2013).

<sup>11</sup> Libya's Integrity and Patriotism Commission has excluded 15 elected members of the GNC, including three congresswomen, on the basis of poorly defined connections with the Gaddafi government and family, although some of these people are challenging the decision in court. Mathieu Galtier, "Inside the Commission for Integrity and Patriotism," *Libya Herald*, April 11, 2013, <http://www.libyaherald.com/2013/04/11/inside-the-commission-for-integrity-and-patriotism/> (accessed May 1, 2013).

significant positions on their candidate lists and to invest in capacity building and education of female candidates and voters.

## Election Campaigning and Awareness

Under the 2012 electoral law, which was used for the first GNC elections, election campaigns could only begin after the official candidate list was released. Delays in the candidate approval and appeals process resulted in the candidate list being released on June 18, giving candidates less than three weeks to campaign before the July 7 elections.

Voters had little idea who most of the actual candidates were and candidates told Human Rights Watch that they had little opportunity to inform voters about their qualifications and positions during a three-week campaign. Many voters told Human Rights Watch that they did not understand the elections or the election process. One voter said she thought she had actually voted when she had only registered to vote.<sup>12</sup> Not having previous elections experience, some of the candidates that Human Rights Watch interviewed did not have detailed platforms, instead relying on general election slogans and their personal reputations.

According to Libyan women's rights activists, marginalized groups, including those who live in remote and rural areas, the elderly, those with disabilities, and those who are illiterate or do not have good access to information, faced a particularly challenging task to learn about the registration and voting process.

Some female candidates told Human Rights Watch that they tried to attract voter interest through different methods, including posters, websites, and campaigning in the streets. Women's faces beamed from election posters in Tripoli and Benghazi, a significant innovation in a culture that prizes traditional notions of female modesty and is unused to such public displays of women, according to rights activists. Some female candidates engaged male voters on the streets, even in the evenings, challenging another taboo in Libya's traditional society.

Human Rights Watch saw Amal Mohamed B'ayou, an independent candidate in Benghazi, handing out election pamphlets to passengers of passing cars one evening in early July.<sup>13</sup> Nearby, her two sisters also handed out pamphlets and initiated conversations, including

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<sup>12</sup> Human Rights Watch interview with a Libyan woman, name withheld, Tripoli, June 30, 2012.

<sup>13</sup> Human Rights Watch interview with Amal Mohamed B'ayou, Benghazi, July 6, 2012.

with young men, which could have been culturally inappropriate in another context. “Support the woman,” B’ayou told a car full of men as she made her election pitch to them. “She is everything,” one of them positively responded.

“For 42 years men have ruled Libya,” B’ayou told Human Rights Watch as she walked from car to car. “Now it’s time for the women to rule.”

At the same time, women faced resistance to change.<sup>14</sup> Not everyone welcomed women taking on new roles that did not conform to traditional views of women’s place in Libyan society. Human Rights Watch documented more than a dozen instances of vandalism against the election posters of female candidates. Vandals tore down posters of a number of female candidates, or slashed and spray painted their faces, while leaving those of male candidates intact. Some female candidates also complained of pushback from family and friends on the appropriateness of Libyan women in politics.

Najiya Gjem, an independent candidate and English professor at Tripoli University, told Human Rights Watch that her sister-in-law told her it is *haram* (forbidden) for women to run for office and to campaign.<sup>15</sup> A sheikh who had previously given the 57-year-old mother of five an award for her volunteer work with children with disabilities and praised her as a good role model for women, told her that on religious grounds he would not support her or any female candidate in the election. “He told me, ‘I am a Salafi, I’m against women’s participation in the elections. They should stay at home and not run in the elections,’” Gjem said. “I responded, ‘But I am still the same woman that you gave the award to.’ The Gaddafi regime put us in a shell and we knew nothing about democracy. And we are still learning.”

During the elections on July 7, 2012, Human Rights Watch observed more than 20 polling stations around Tripoli and Benghazi. Forty-five percent of registered voters (1.3 million out of a total of 2.86 million) were women.<sup>16</sup> Although women of all ages voted, many

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<sup>14</sup> National Democratic Institute, “Building a New Libya: Citizen views on Libya’s electoral and political processes,” May 2012, <http://www.ndi.org/files/Libya-Focus-Group-May2012.pdf> (accessed March 23, 2013).

<sup>15</sup> Human Rights Watch interview with Najiya Gjem, Tripoli, June 25, 2012.

<sup>16</sup> “Elections in Libya: 7 July General National Congress Elections – Frequently Asked Questions,” *Libya Herald*, June 30, 2012, <http://www.libyaherald.com/2012/06/30/elections-in-libya-july-7-general-national-congress-elections-frequently-asked-questions/> (accessed March 23, 2013).

accompanied by their children or other family members, the voting turnout for women across the country, at 39 percent, was notably lower than for men.<sup>17</sup>

A perceived lack of security and the presence of armed men in front of some polling stations may have contributed to the lower turnout for female voters. After a polling station at the Alwiyyat al-Hurriyya school was attacked in Benghazi and ballot boxes were stolen, heavily armed men in civilian clothes gathered around other polling stations in Benghazi to repel further attacks. At one Benghazi location, armed men displayed a rocket propelled grenade launcher and other weapons, clogging the entrance of the polling station while women tried to vote.

The majority of the polling stations that Human Rights Watch observed had female election workers who assisted female voters. The only exception was the polling station at the al-Hillees Camp on the outskirts of Benghazi, a temporary location set up for displaced persons from the town of Tawergha, which had no female election workers.<sup>18</sup> However, Human Rights Watch observed women voting there.

In many polling stations, Human Rights Watch also observed that elderly women and women with disabilities required assistance to get to voting booths because of the limited accessibility of the buildings. By allowing people with “special needs” to bring assistants, the 2012 electoral law was an improvement on an earlier draft, which had no such provision and also prohibited individuals from voting if they had a “mental illness.” However, a number of barriers still need to be addressed to ensure the right to political participation for women and men with all types of disabilities.

Apart from physical inaccessibility of polling stations, other problems included the limited availability of appropriate accommodations such as Braille ballots, and a lack of accessible materials on the election process. The GNC needs to address these issues to ensure the right

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<sup>17</sup> News conference, Nouri al-Abbar, Chairman of the High National Election Commission, Tripoli, July 17, 2012. See also, “Official Final Election Results in Libya Show Liberals Got 62 Percent of Votes,” *The Tripoli Post*, July 17, 2012, <http://www.tripolipost.com/articledetail.asp?c=1&i=8837> (accessed March 23, 2013).

<sup>18</sup> About 40,000 people from Tawergha were forcibly displaced by militias from the nearby city of Misrata because they are accused of having fought with and supported pro-Gaddafi forces during the conflict. See Human Rights Watch press release, “Stop Revenge Crimes Against Displaced Persons,” March 20, 2013, <http://www.hrw.org/news/2013/03/20/libya-stop-revenge-crimes-against-displaced-persons>.

to political participation for people with all types of disabilities in future elections. Specific measures should also be developed for people with psychosocial or intellectual disabilities.

## Governmental Leadership in Appointments

Women's groups and some parliamentarians in Libya have urged greater governmental leadership in promoting women's political participation, including in the selection of government ministers.

On October 14, 2012, the GNC selected Ali Zeidan to assume the post of prime minister three months after the elections.<sup>19</sup> Zeidan's first cabinet of 33 ministerial positions contained two women, both selected for junior posts—ministers of tourism and social affairs. Kamila Khamis al-Mazini, the minister of social affairs, criticized the lack of female ministers given that “women are half of the population.”<sup>20</sup> “It's not enough to have a woman minister of tourism or a woman minister of social affairs,” she said. “Women don't have to be linked to social affairs and only to social affairs. In the future we should have women at the head of sovereign ministries.”<sup>21</sup>

## Drafting the Constitution

A major task for the GNC is overseeing the writing of the constitution that will redefine Libya's system of government, its governing institutions, and their respective powers. The GNC should ensure that women's equality and right to freedom from discrimination are enshrined in the constitution.

In 2011, the National Transitional Council (NTC) announced that a 60-person committee of experts, comprising 20 members from each of the country's south, west, and central regions, would be responsible for drafting the constitution. However, on July 5, 2012, just days ahead of the general election, the NTC amended the Constitutional Declaration so

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<sup>19</sup> A week earlier, on October 7, the assembly rejected a “crisis cabinet” proposed by elected Prime Minister Mustafa Abu Shagur, resulting in his automatic dismissal less than one month after he took office. Shagur's proposed cabinet of 28 ministers had one woman named to minister of social affairs.

<sup>20</sup> Marine Casalis, “Encouraging Libyan women to play a greater role in politics,” *rfi English*, February 5, 2013, <http://www.english.rfi.fr/middle-east/20130204-encouraging-Libyan-women-play-greater-role-politics> (accessed March 23, 2013).

<sup>21</sup> *Ibid.*

that a Constituent Assembly would be elected by the population rather than appointed.<sup>22</sup> After months of uncertainty, on February 6, 2013, the GNC decided that the Constituent Assembly would indeed be selected through a popular election.<sup>23</sup> On February 13, the GNC approved a committee to write the electoral law for the vote for the Constituent Assembly.<sup>24</sup> However, in late February, Libya's Supreme Court invalidated the July 2012 amendment to the Constitutional Declaration, casting doubt on whether the Constituent Assembly will be elected.<sup>25</sup> In early April, the GNC confirmed that the Constituent Assembly would be elected.<sup>26</sup> On April 15, it appointed 18 members to the election law drafting committee and instructed them to finalize a draft law for the GNC to debate within 45 days.<sup>27</sup>

Given the fundamental importance of a constitution in upholding and promoting women's rights, ensuring women's representation on the Constituent Assembly is a key concern of the Libyan women's rights activists that Human Rights Watch interviewed. Accordingly, women's groups are developing advocacy strategies to have women represented on the drafting committee as well as to ensure that the constitution has substantive provisions protecting women's rights.

In August and September 2012, Libyan women's rights activists<sup>28</sup> and members of the GNC met in Tripoli to discuss the constitutional drafting process.<sup>29</sup> As part of their advocacy

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<sup>22</sup> Constitutional Declaration amendment 3/2012, [http://www.gnc.gov.ly/index.php?option=com\\_content&view=article&id=55:-----11-11-2012-----&catid=1:2012-08-09-13-20-21&Itemid=12](http://www.gnc.gov.ly/index.php?option=com_content&view=article&id=55:-----11-11-2012-----&catid=1:2012-08-09-13-20-21&Itemid=12) (accessed March 25, 2013). See also George Grant, "Debate on selecting Libya Constitution drafters begins," *Saudi Gazette*, November 21, 2012, <http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentid=20121121143565> (accessed March 23, 2013).

<sup>23</sup> "Libya: UN welcomes decision on formation of constitution-drafting body," *UN News Centre*, February 6, 2013, <http://www.un.org/apps/news/story.asp?NewsID=44084&Cr=libya&Cr1=#.URR4u5F5iAY> (accessed March 23, 2013).

<sup>24</sup> The three, nominated by the GNC president's office, are Sulaiman Zubi, Mohamed Abdullah Tumi and Shaaban Ali Issa Buseita. (Lorianne Updike Toler, "Members of Electoral Committee approved," *Libya Herald*, February 13, 2013, <http://www.libyaherald.com/2013/02/13/members-of-electoral-committee-approved/> (accessed March 23, 2013).

<sup>25</sup> Lorianne Toler, "Supreme Court ruling may provide opportunity for intelligent design of Libya's Constitutional process," *Libya Herald*, March 13, 2013, <http://www.libyaherald.com/2013/03/14/supreme-court-ruling-may-provide-opportunity-for-intelligent-design-of-libyas-constitutional-process-part-2/> (accessed March 23, 2013).

<sup>26</sup> Valerie Stocker, "The Constitutional Commission will be elected and the Political Isolation law is constitutional, rules Congress," *Libya Herald*, April 11, 2013. <http://www.libyaherald.com/2013/04/11/the-constituent-assembly-will-be-elected-and-the-political-isolation-law-is-constitutional-rules-congress/> (accessed April 15, 2013).

<sup>27</sup> Three of the 18 committee members are women. Hadi Fornaji, "Congress names committee members to draft Constitutional Commission election law," *Libya Herald*, April 15, 2013, <http://www.libyaherald.com/2013/04/15/congress-names-committee-members-to-draft-constitutional-commission-election-law/> (accessed April 17, 2013).

<sup>28</sup> The groups included Karama, a nongovernmental advocacy organization that partners with groups in the Middle East region to combat violence against women, and The Libyan Women's Platform for Peace, an NGO that was formed in May 2011 and consists of Libyan women's rights activists. ("Libyan Women Plan Roles in Reconciliation and Transitional Government," *IPS*, <http://www.ips.org/mdg3/libyan-women-plan-roles-in-reconciliation-and-transitional-government/>, (accessed March 23, 2013).)

efforts, a coalition of women's groups launched The Right Committee campaign to lobby the GNC for a diverse and independent constitutional drafting committee. The coalition recommended that the committee include at least 30 percent female representation if the committee was to be formed by an election.<sup>30</sup>

In December 2012, a number of Libya's leading women's nongovernmental organizations met with GNC head Mohammed Magarief and handed him a signed petition calling for "affirmative action to ensure the inclusion of women in the Constituent Assembly."<sup>31</sup> According to the Voice of Libyan Women, one of the organizations involved, Magarief showed strong support for affirmative action to ensure women's inclusion in the Constituent Assembly.<sup>32</sup> He stated that their participation is "integral for the GNC to support the role of women, not only in the Constituent Assembly but in the overall achievement of a democratic and free Libya."

In January 2013, women's rights activists from across Libya met in Tripoli for a Voice of Libyan Women conference and recommended that women comprise 35 percent of the Constituent Assembly, and that the assembly hire a gender expert as an advisor.

Libya's female GNC members are also pushing for an inclusive constitutional drafting process. On January 13, 2013, Congresswoman Hana al-Orfi from Misrata announced that 29 congresswomen had formed a cross-party women's bloc in the GNC to promote women's rights and push for female representation on the Constituent Assembly.<sup>33</sup> The bloc's formation came days after Zawiya Congressman Mohammed al-Kilani criticized the presence of women in the congress, saying that the attire of congresswomen and gender mixing within the GNC had caused God to be furious with the legislature, resulting in the Congress' shortcomings.<sup>34</sup>

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<sup>29</sup> "Libyan Activists Issue Recommendations on the Constitutional Drafting Process," post to "Recent Posts" (blog), Libyan Women's Platform for Peace, February 8, 2013, <http://lwpp.org/> (accessed March 23, 2013).

<sup>30</sup> Ibid.

<sup>31</sup> Sami Zaptia, "Magarief strongly supports women's inclusion in the constitution drafting committee," *Libya Herald*, December 27, 2012, <http://www.libyaherald.com/2012/12/27/magarief-strongly-supports-womens-inclusion-in-the-constitution-drafting-committee/> (accessed March 23, 2013).

<sup>32</sup> Ibid.

<sup>33</sup> Nihal Zaroug, "Women's bloc founded in Congress," *Libya Herald*, January 14, 2013, <http://www.libyaherald.com/2013/01/14/womens-bloc-founded-in-congress/> (accessed March 23, 2013).

<sup>34</sup> Ibid.

### III. A Constitution that Protects Human Rights

#### Gender-Sensitive Constitutional Provisions

Libya's constitutional drafting committee, the Constituent Assembly, when formed, should draft provisions that explicitly prohibit discrimination against women and ensure the equal right of men and women to the enjoyment of the rights set out in the constitution. Libya's constitution should contain no provisions that entrench any form of discrimination against women. The provisions of the constitution on equality should definitively override any law. Libya's failure to ratify a constitution that meets these standards would be an abdication of its international human rights obligations.

Libya's Constitutional Declaration, which was passed in August 2011 and remains in effect until a permanent constitution is adopted, affirms the state's commitment to human rights and basic freedoms and commits Libya to joining international conventions "that protect such rights and freedoms."<sup>35</sup> In March 2012 and 2013, the UN Security Council adopted resolutions calling on Libyan authorities to "comply with their obligations under international law," including human rights law, and to "promote and protect human rights, including those of women."<sup>36</sup>

Libya has long been a party to the principal international and regional treaties pertaining to equality between women and men. Libya acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1989, albeit with reservations.<sup>37</sup>

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<sup>35</sup> Constitutional Declaration, art. 7.

<sup>36</sup> UN Security Council, Resolution 2040 (2012), S/RES/2040 (2012), [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/2040\(2012\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2040(2012)) (accessed March 24, 2012), para. 3; UN Security Council, Resolution 2095 (2013), S/RES/2095 (2013), para. 3.

<sup>37</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, <http://www2.ohchr.org/english/law/cedaw.htm> (accessed March 23, 2012), ratified by Libya on May 16, 1989. Libya has also ratified the Optional Protocol to CEDAW, which allows the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) to receive and consider complaints from individuals or groups. (Optional Protocol to the Convention on the Elimination of Discrimination against Women, adopted October 6, 1999, G.A. res. 54/4, annex, 54 U.N. GAOR Supp. (No. 49) at 5, U.N. Doc. A/54/49 (Vol. I) (2000), entered into force December 22, 2000, <http://www2.ohchr.org/english/law/cedaw-one.htm> (accessed March 23, 2012), ratified by Libya on June 18, 2004.) At the time of accession, Libya entered a general reservation stating that the treaty's implementation could not "conflict with the laws on personal status derived from Islamic law, or Sharia. (Ann Elizabeth Mayer, "Islamic Reservations to Human Rights Conventions: A Critical Assessment," *Recht van de Islam* 15 (1988), [http://www.verenigingrimo.nl/wp/wp-content/uploads/recht15\\_mayer.pdf](http://www.verenigingrimo.nl/wp/wp-content/uploads/recht15_mayer.pdf) (accessed March 24, 2013), p. 25.) In 1995, the then Libyan government notified the UN Secretary-General that it was replacing that reservation with a new formulation according to which Libya would implement CEDAW articles 2 (the reservation is regarding inheritance) and 16 (c) and (d) (regarding

Libya was among the first countries to ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), which includes a wide range of provisions on nondiscrimination against women, including in political life and access to justice, and on violence against women.<sup>38</sup> Additional obligations to protect women's rights and ensure their equality before the law and rights to nondiscrimination are enshrined in other international instruments ratified by Libya, including the International Covenant on Civil and Political Rights,<sup>39</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>40</sup> and the Convention on the Rights of the Child (CRC).<sup>41</sup>

The following sections are not intended as a comprehensive list of the provisions needed to enhance, guarantee, and protect the rights of women but as some of the key issues that the new constitution should address.

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marriage, divorce, and child custody) in accordance with Sharia (Islamic law). The reservation states: "1. Article 2 of the Convention shall be implemented with due regard for the peremptory norms of the Islamic *Shariah* relating to determination of the inheritance portions of the estate of a deceased person, whether female or male. 2. The implementation of paragraph 16 (c) and (d) of the Convention shall be without prejudice to any of the rights guaranteed to women by the Islamic *Shariah*." See section on "Declarations and Reservations," Division for the Advancement of Women, Department of Economic and Social Affairs, "Declarations, Reservations and Objections to CEDAW," undated, [www.un.org/womenwatch/daw/cedaw/reservations-country.htm](http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm) (accessed March 24, 2013). However, the Committee on the Elimination of Discrimination against Women (CEDAW Committee), the treaty's monitoring body, has ruled states' reservations to articles 2 and 16 impermissible because these articles are core provisions of the Convention and reservations to them are fundamentally incompatible with the object and purpose of the treaty. (Division for the Advancement of Women, Department of Economic and Social Affairs, "Reservations to CEDAW," undated, <http://www.un.org/womenwatch/daw/cedaw/reservations.htm> (accessed March 24, 2013)). The Committee specifically criticized these reservations in its review of Libya's application of CEDAW in 2009. In the Committee's concluding observations on Libya's periodic reports, the CEDAW Committee welcomed Libya's withdrawal of its general reservation but expressed concern over the remaining reservations, stating that they were "contrary to the object and purpose of the Convention." (CEDAW Committee, "Concluding observations of the Committee on the Elimination of Discrimination against Women, Libyan Arab Jamahiriya," CEDAW/C/LBY/CO/5, February 6, 2009, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/No9/227/84/PDF/No922784.pdf?OpenElement> (accessed March 24, 2013), para. 13.) The Committee also noted that Libya did not enter any reservations to the ICCPR, which also requires equality between women and men in these areas (Ibid). Moreover, the CEDAW Committee has noted that "reservations to article 16, whether lodged for national, traditional, religious or cultural reasons, are incompatible with the Convention and therefore impermissible and should be reviewed and modified or withdrawn." (Division for the Advancement of Women, Department of Economic and Social Affairs, "Reservations to CEDAW," undated, <http://www.un.org/womenwatch/daw/cedaw/reservations.htm> (accessed March 24, 2013).

<sup>38</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, September 13, 2000, CAB/LEG/66.6, entered into force November 25, 2005, <http://www1.umn.edu/humanrts/africa/protocol-women2003.html> (accessed March 23, 2013), ratified by Libya on May 23, 2004.

<sup>39</sup> See note 34.

<sup>40</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx> (accessed March 24, 2013), acceded to by Libya on May 15, 1970, art. 3.

<sup>41</sup> Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> (accessed March 24, 2013), acceded to by Libya on April 15, 1993, art. 2.

## *Equality Before the Law*

It is crucial to ensure respect for women's rights that the constitution includes guarantees both of equality before the law and of nondiscrimination, such as are set out in the ICCPR, CEDAW, and the Maputo Protocol.<sup>42</sup>

A provision on equality before the law (such as a simple clause stating that “men and women are equal before the law”) would go some way toward protecting gender equality. Libya's current Constitutional Declaration contains an equality provision merely stating that “Libyans shall be equal before the law.”<sup>43</sup>

As noted in CEDAW and other relevant international instruments to which Libya is party, equality before the law requires that men and women are afforded equal rights in regard to legal capacities, including access to legal remedies and due process. Article 15, sub-articles 1 and 2, of CEDAW state, “States Parties shall accord to women equality with men before the law” and “shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity.” Article 8 of the Maputo Protocol guarantees women access to justice and equal protection of the law. The ICCPR specifically states in article 3 that men and women should enjoy equal access to all the civil and political rights set out in the Covenant, and in article 26 that, “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”

## *Nondiscrimination*

A strong provision on nondiscrimination in Libya's constitution would also help ensure gender equality by prohibiting discrimination on the basis of gender, sex, pregnancy, and marital status, among other categories. Libya's current Constitutional Declaration lists “sex” as one of the prohibited grounds for discrimination.<sup>44</sup>

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<sup>42</sup> Under article 2 of CEDAW, states parties should “condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) *To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein* and to ensure, through law and other appropriate means, the practical realization of this principle” [emphasis added]. The Maputo Protocol similarly provides for states parties to include the principle of equality between women and men in national constitutions: “States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall: a) *include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men* and ensure its effective application” [emphasis added] (art. 2(1)(a)).

<sup>43</sup> Constitutional Declaration, art. 6: “Libyans are equal before the law; they shall enjoy equal civil and political rights, shall have the same opportunity, and be subject to the same public duties and obligations, without distinction due to religion, denomination, language, wealth, sex, kinship, political opinions, and social status, tribal or eminent or familial loyalty.”

<sup>44</sup> Constitutional Declaration, art. 6.

The constitution should also require the legislature to pass legislation to further prevent and prohibit discrimination by state and private parties, allow courts to strike down discriminatory policies, and give those affected by it an effective remedy.<sup>45</sup>

CEDAW provides that governments must “condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle.”<sup>46</sup> The Maputo Protocol includes a similar provision, calling for the principle of equality between men and women to be included in national constitutions and other laws.<sup>47</sup>

A nondiscrimination provision in Libya’s constitution should address all forms of discrimination against women, including in the political sphere. CEDAW specifically requires that states take all appropriate measures to ensure that women (on equal terms with men) have the right to vote in all elections, to be eligible for election to all publicly elected bodies, and to participate in the formulation of government policy.<sup>48</sup> Other international and regional human rights conventions contain similar provisions.<sup>49</sup>

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<sup>45</sup> For example, section 9(4) of South Africa’s constitution stipulates that “National legislation must be enacted to prevent or prohibit unfair discrimination”. (Constitution of the Republic of South Africa No. 108 of 1996, <http://www.info.gov.za/documents/constitution/1996/a108-96.pdf> (accessed March 23, 2013). On April 9, 2013, the GNC passed legislation to criminalize torture, enforced disappearances and discrimination. The law includes sex as one of the prohibited grounds for discrimination and allows imprisonment when a person has deprived another “of any of his rights” because he or she belongs to a “specific group, community or region, or on the basis of sex or color.” “GNC agrees uncompromising law on torture, kidnapping and discrimination,” *Libya Herald*, April 2, 2013, <http://www.libyaherald.com/2013/04/09/gnc-agrees-uncompromising-law-on-torture-kidnapping-and-discrimination/> (accessed May 1, 2013).

<sup>46</sup> CEDAW, art. 2(a) [emphasis added].

<sup>47</sup> Maputo Protocol, art. 2(1)(a).

<sup>48</sup> CEDAW, art. 7

<sup>49</sup> The conventions and their interpretations call for a variety of measures to realize the right of nondiscrimination in political participation. See Maputo Protocol art. 9; CEDAW Committee, General Recommendation No. 23, Political and public life, (Sixteenth session, 1997), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.9 (Vol. II) (2008), p. 347, para. 5; CEDAW Committee, General Recommendation No. 25, Article 4, paragraph 1, of the Convention (temporary special measures), (Thirtieth session, 2004), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.9 (Vol. II) (2008), p. 365, para. 18; CEDAW Committee, General Recommendations No. 5, Temporary special measures, (Seventh-session, 1988), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.9 (Vol. II) (2008), p. 320; UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment

## *Violence against Women*

Libya's constitutional drafters should also include provisions in the constitution that acknowledge and require action against violence against women as a form of discrimination. International and regional human rights treaties, declarations, and treaty body interpretations require that governments act with due diligence to combat violence against women.<sup>50</sup> Several states, such as Bhutan, Colombia, Malawi, and Paraguay, already explicitly reference violence against women or family violence in their constitutions.<sup>51</sup> The CEDAW Committee declared in its General Recommendations 28 and

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No. 16, The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights), (Thirty- fourth session, 2005), U.N. Doc. E/C.12/2005/4 (2005), paras. 18 and 19; UN Human Rights Committee (HRC), General Comment No. 25, Article 25 (Participation in public affairs and the right to vote), (Fifty-seventh session, 1996), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.9 (Vol. I) (2008), p. 217, para. 11.; HRC, General Comment No. 28, Article 3 (The equality of rights between men and women), (Sixty-eighth session, 2000), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.9 (Vol. I) (2008), p. 228, para. 29; HRC, General Comment No. 18, Non-discrimination, (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.9 (Vol. I) (2008), p. 195, para. 10.; CESCR, General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/GC/20 (2009), para. 9; and UN Security Council, Report of the Secretary-General on Women, peace and security, S/2010/173, April 6, 2010, paras. 21 and 25.

<sup>50</sup> Fourth World Conference on Women, Report of the Fourth World Conference on Women ("Beijing Declaration and Platform for Action"), Beijing, 4-15 September 1995, A/CONF.177/20, October 17, 1995, <http://www.un.org/esa/gopher-data/conf/fwcw/off/a--20.en> (accessed March 23, 2013), para. 124; Maputo Protocol, art. 4(2)(a); United Nations (UN) Commission of Human Rights, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Erturk, Integration of the Human Rights of Women and the Gender Perspective: Violence against Women, The Due Diligence Standard as a Tool for the Elimination of Violence Against Women," E/CN.4/2006/61, January 20, 2006, [http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/PDF\\_UN\\_Sp\\_Rapp\\_report\\_due\\_diligence\\_standard.pdf](http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/PDF_UN_Sp_Rapp_report_due_diligence_standard.pdf) (accessed March 23, 2013), para. 25; UN Committee on the Elimination of Discrimination against Women, "General Recommendation No. 19: Violence against women," (Eleventh session, 1992), <http://www2.ohchr.org/english/bodies/cedaw/comments.htm> (accessed March 23, 2013), paras. 24(a) and (t); UN Declaration on the Elimination of Violence Against Women, December 20, 1993, G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993), <http://www.un.org/documents/ga/res/48/a48r104.htm> (accessed March 23, 2013), art. 4; UN Human Rights Committee, "HRC, General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties: general legal obligation on states parties to the Covenant," U.N. Doc. CCPR/C/21/Rev.1/Add.13, (Eightieth session, 2004), <http://www2.ohchr.org/english/bodies/hrc/comments.htm> (accessed March 23, 2013), para. 8.

<sup>51</sup> In Bhutan's constitution, article 8(5) states, "A person shall not tolerate or participate in ... abuse of women," and article 9(17) provides that the State "shall endeavor to take appropriate measures to eliminate all forms of discrimination and exploitation against women including trafficking, prostitution, abuse, violence, harassment and intimidation at work in both public and private spheres." (The Constitution of the Kingdom of Bhutan, 2008, [http://www.wipo.int/wipolex/fr/text.jsp?file\\_id=167955](http://www.wipo.int/wipolex/fr/text.jsp?file_id=167955) (accessed March 23, 2013).) Article 42 of the Colombian constitution states: "Any form of violence in the family is considered destructive of its harmony and unity and will be sanctioned according to law." (Constitution of Columbia, 2005, [http://confinder.richmond.edu/admin/docs/colombia\\_const2.pdf](http://confinder.richmond.edu/admin/docs/colombia_const2.pdf) (accessed March 23, 2013).) Malawi's constitution states that the country "shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the following goals ...[t]o obtain gender equality for women and men through - ...the implementation of policies to address social issues such as domestic violence, [and] security of person" (Constitution of the Republic of Malawi, 1994, [http://www.wipo.int/wipolex/fr/text.jsp?file\\_id=218796](http://www.wipo.int/wipolex/fr/text.jsp?file_id=218796) (accessed March 23, 2013), art. 13(a)(iii).) Article 60 of Paraguay's constitution provides that the State "will promote policies that aim at

19 that violence against women amounts to a form of discrimination and notes that states have a due diligence obligation to prevent, investigate, prosecute, and punish acts of gender-based violence.<sup>52</sup> Article 4 of the Maputo Protocol requires States parties, such as Libya, to adopt all necessary measures for the prevention, punishment, and eradication of all forms of violence against women.<sup>53</sup>

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preventing violence within the family and other causes that undermine family solidarity.” (Constitution of the Republic of Paraguay, 1992, [http://www.servat.unibe.ch/icl/pa00000\\_.html](http://www.servat.unibe.ch/icl/pa00000_.html) (accessed March 23, 2013).)

<sup>52</sup> CEDAW Committee, General Recommendation No. 28, The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28 (2010), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/472/60/PDF/G1047260.pdf?OpenElement> (accessed March 23, 2013), paras. 19 and 34; and CEDAW Committee, General Recommendation No. 19, Violence against Women, (Eleventh session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/Go8/422/43/PDF/Go842243.pdf?OpenElement> (accessed March 24, 2013), p. 331, para. 9.

<sup>53</sup> Maputo Protocol, art. 4(2).

## IV. Amending Gaddafi-era Legislation

While the radical political change in Libya has already provided unprecedented opportunities to reshape the legal and social status of women in Libya, including with regard to their full and meaningful participation in politics, the gains made to date remain fragile and need to be rapidly bolstered by clear constitutional and legislative guarantees.

Libyan authorities must therefore amend existing legislation and regulations that have subjected women to discrimination and abuse; including gender-specific violence, unequal personal status laws, and an ambiguous nationality law.

### Violence against Women

Women's rights advocates told Human Rights Watch that violence against women and girls, particularly domestic violence, remains a significant problem in Libya. Libya's pre-revolution laws scarcely addressed this issue, or did so in discriminatory ways. Libyan lawmakers should now seek to eliminate violence against women as a pervasive form of discrimination, including through the constitution and legislative reforms.

International and regional human rights treaties require that governments act with due diligence to combat violence against women.<sup>54</sup> The CEDAW Committee declared in its General Recommendations 28 and 19 that violence against women amounts to a form of discrimination and said that states have a due diligence obligation to prevent, investigate, prosecute, and punish acts of gender-based violence.<sup>55</sup>

According to women's rights groups, survivors of sexual and domestic violence have limited recourse to effective remedies in Libya, as the CEDAW Committee also noted in its 2009 concluding observations on Libya's application of CEDAW.<sup>56</sup> Inadequate laws and services leave female victims of violence without an effective remedy and deter them from reporting rape and domestic violence. This is compounded by Libya's conservative society,

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<sup>54</sup> See note 39.

<sup>55</sup> CEDAW Committee, General Recommendation No. 28, U.N. Doc. CEDAW/C/GC/28 (2010), paras. 19, 34; and CEDAW Committee, General Recommendation No. 19, (Eleventh session, 1992), para. 9.

<sup>56</sup> CEDAW Committee, "Concluding observations of the Committee on the Elimination of Discrimination against Women, Libyan Arab Jamahiriya," February 6, 2009, para. 23.

which deters sexual abuse victims from speaking out because of stigma and the dangers that survivors may face when reporting crimes.<sup>57</sup>

Libya's only current law relating to domestic violence is Law No. 10 of 1984, which states that a woman "has the right to expect her husband to ... refrain from causing her physical or psychological harm."<sup>58</sup> The law provides no enforcement mechanisms, however, and therefore is not effective in combating the problem.

The current penal code is particularly problematic as it regards violence against women.<sup>59</sup> This is because it classifies sexual violence as a crime against a woman's honor, rather than against the woman as individual victim or as a violation of her bodily integrity.<sup>60</sup> All forms of sexual assault should be considered fundamentally as a crime against the individual rather than a crime against norms or values. By focusing on a victim's honor, this law perpetuates the notion that a rape survivor has lost her honor, and thereby may serve to undermine justice by leading courts to focus on examining a woman's sexual history rather than the alleged violence committed against her by the accused.

The penal code also has less severe criminal sentencing provisions for perpetrators of so-called honor crimes than perpetrators of the same crimes where honor cannot be cited as a basis for mitigation. According to article 375 of Libya's penal code, the maximum penalty for a man who immediately kills his wife, mother, daughter, or sister after witnessing them engaging in extramarital sexual relations is imprisonment for an unspecified period.<sup>61</sup> By contrast, the usual punishment for a non-premeditated but deliberate homicide of a family member or a spouse under the penal code is life imprisonment unless the crime was connected to another serious crime, in which case

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<sup>57</sup> Human Rights Watch, *Libya - A Threat to Society?: Arbitrary Detention of Women and Girls for "Social Rehabilitation*, vol. 18, no. 2(E), <http://www.hrw.org/reports/2006/libyao206/libyao206webwcover.pdf>.

<sup>58</sup> Law Concerning the Specific Provisions on Marriage and Divorce and their Consequences, No. 10 of 1984, art. 17, <http://www.aladel.gov.ly/main/modules/sections/item.php?itemid=93> (accessed March 25, 2013).

<sup>59</sup> Penal Code, <http://www.aladel.gov.ly/main/modules/sections/item.php?itemid=68> (accessed March 24, 2013).

<sup>60</sup> *Ibid*, chapter 3.

<sup>61</sup> *Ibid*, art. 375: Killing or Injuring in Preservation of Honor: Whosoever is surprised by witnessing his wife, daughter, sister, or mother in the act of adultery or in an unlawful act of intercourse and immediately kills her or her partner or both together in response to the assault that touches his honor or the honor of his family, shall be punished by imprisonment. If the act results in grave or serious injury to those mentioned in the same circumstances, the penalty shall be imprisonment for a period not to exceed two years. Mere beating or minor injury is not punishable in such circumstances.

the punishment is death.<sup>62</sup> Premeditated homicides usually incur the death penalty under the penal code.<sup>63</sup>

Also under article 375, a man whose honor-motivated violence results in “grave or serious injuries” to his wife or female relative may be imprisoned for no more than two years, whereas the same violence could result in a 7.5-year maximum prison sentence if the attack was not deemed to have been motivated by honor.<sup>64</sup>

This penal code provision clearly violates the basic requirement of international human rights law that individuals are entitled to equality before the law and should not suffer discrimination on the grounds of their sex. The penalty for murder or for battery should be consistent throughout the penal code—though it should not include the death penalty, which Human Rights Watch opposes in all circumstances—and the relationship between the victim and the perpetrator should not affect this.<sup>65</sup> As the CEDAW Committee has specifically elaborated, states have an obligation to enact “legislation to remove the defense of honor in regard to the assault or murder of a female family member.”<sup>66</sup> Article 375 of the penal code also effectively authorizes, even invites, violence against women by declaring explicitly that a man who “merely” beats his wife, daughter, sister, or mother caught in the act of unlawful intercourse shall not be punished.

Another problematic area is Libya’s *zina* laws, which are codified in the penal code and Law No. 70 of 1973. *Zina* laws criminalize extramarital sexual relations including adultery and fornication, often blurring the distinction between forced and consensual sex. Because victims of sexual assault can be prosecuted under these laws, they are discouraged from seeking justice.<sup>67</sup> Women and girls who attempt to press charges for rape risk ending up in prison themselves because a court may view such a charge as an admission on their part of engaging in unlawful sex, unless they can prove (by strict

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<sup>62</sup> Ibid, art. 372.

<sup>63</sup> Ibid, art. 368.

<sup>64</sup> Ibid, arts. 381, 382.

<sup>65</sup> Human Rights Watch opposes capital punishment in all countries and in all circumstances because the inherent dignity of the person is inconsistent with the death penalty. This form of punishment is unique in its cruelty and finality, and it is inevitably and universally plagued with arbitrariness, prejudice, and error.

<sup>66</sup> CEDAW Committee, General Recommendation No. 19, (Eleventh session, 1992), para. 24 (r)(ii).

<sup>67</sup> Law Regarding the Establishment of the Hadd Penalty for *Zina* modifying some of the Provisions of the Penal Law, No. 70 of 1973. Article 1 defines *zina* as intercourse between a man and woman who are not bound to each other by marriage. Flogging is prescribed as punishment for those convicted of the *zina* offenses outlined in articles 2 and 3.

evidentiary standards) that the intercourse was non-consensual and not, therefore, either fornication or adultery. Exacerbating the suffering of victims, such cases are sometimes resolved through family arrangements such as coerced marriage of the rape victim to her rapist in order to avoid public scandal. In cases where the rapist and the victim consent to marry, the judge issues a suspended sentence.<sup>68</sup>

Such criminalization of *zina* violates international legal standards concerning the right to privacy and guaranteeing individuals the right to have control over matters relating to their sexuality – free from coercion, discrimination, and violence – by criminalizing consensual sexual relations between adults. International human rights law generally requires decriminalization of consensual adult sexual relationships to protect a variety of human rights, including the rights to non-discrimination, health, privacy, and liberty.

Expert bodies of the United Nations and special rapporteurs have called for the repeal of *zina* laws in various countries. In October 2012, the United Nations Working Group on the issue of discrimination against women in law and in practice urged governments to repeal laws that criminalize adultery.<sup>69</sup>

In its 2009 concluding observations on Libya, the CEDAW Committee expressed concern that the maintenance of Law No. 70 of 1973 criminalizing extramarital sexual relations may have a disproportionate impact on women.<sup>70</sup> The Committee also expressed concern at the “widespread practice whereby marriage between perpetrators of rape and women victims of rape is encouraged to protect the victims from social stigma and marginalization,” resulting in impunity for the perpetrator.<sup>71</sup>

Related to *zina* laws and the absence of laws denouncing gender-based violence are Libya’s so-called social rehabilitation facilities, where some victims of gender-based violence and domestic violence are detained. Human Rights Watch visited such facilities in Libya in 2005, and interviewed women and girls who described a situation of detention

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<sup>68</sup> Human Rights Watch, *A Threat to Society?*, p. 12.

<sup>69</sup> Office of the High Commissioner for Human Rights, “‘Adultery should not be criminal offence at all,’ says UN expert group on women’s human rights,” October 18, 2012, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12673&LangID=E> (accessed March 24, 2013).

<sup>70</sup> CEDAW Committee, “Concluding observations of the Committee on the Elimination of Discrimination against Women, Libyan Arab Jamahiriya,” February 6, 2009, para. 23.

<sup>71</sup> *Ibid.*

rather than voluntary shelter.<sup>72</sup> The government at the time justified the use of these “homes” as a measure of “protection” for women and girls suspected of having engaged in “illicit” sex and whose families rejected them. But women and girls could not, in reality, leave these de facto prisons, and many had committed no crime, or had already served a sentence. Some were there for no other reason than that they had been raped, and were then ostracized for “staining their family’s honor.”

During its visits to Libya in 2012, Human Rights Watch was unable to obtain specific information about the number of women and girls still at these facilities. The Ministry of Social Affairs confirmed that the centers were still in operation and said their occupants were young women and girls with family problems, divorcees, minors who had committed crimes and who had been diverted from prison, pregnant women out of wedlock, and others.<sup>73</sup>

The CEDAW Committee criticized these facilities in its 2009 concluding observations and called on the Libyan authorities to amend the legal provisions that allow women and girls to be incarcerated against their will.<sup>74</sup>

In addition to legal measures (such as penal sanctions, civil remedies, and compensatory provisions) to combat violence against women, the CEDAW Committee has identified other key steps necessary to address violence against women. These include both preventive measures, such as public information and education programs to change attitudes about the roles and status of men and women, and protective measures, including shelters, counseling, rehabilitation, and support services.<sup>75</sup>

As noted by the UN Special Rapporteur on Violence against Women, women with disabilities are at high risk of being subjected to violence because of “social stereotypes and biases that attempt to dehumanize or infantilize, exclude or isolate them, and target them for sexual and other forms of violence.”<sup>76</sup> To address this reality,

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<sup>72</sup> Human Rights Watch, *A Threat to Society?*, p. 3.

<sup>73</sup> Human Rights Watch interview with Mabrouka Jibril, Minister of Social Affairs (at the time), Tripoli, June 26, 2012.

<sup>74</sup> CEDAW Committee, “Concluding observations of the Committee on the Elimination of Discrimination against Women, Libyan Arab Jamahiriya,” February 6, 2009, paras. 23, 24.

<sup>75</sup> CEDAW Committee, General Recommendation No. 19, (Eleventh session, 1992), para.24(t).

<sup>76</sup> UN General Assembly, Advancement of women, Note by the Secretary-General, Report of the Special Rapporteur on violence against women, its causes and consequences, U.N. Doc. A/67/227, August 3, 2012, <http://www.ohchr.org/Documents/Issues/Women/A.67.227.pdf> (accessed March 24, 2013), para. 32.

Libyan authorities should take steps to ensure that all measures address the particular needs of women with disabilities.

## Equality with Respect to Personal Status Laws

Libya's existing personal status laws also discriminate against women, particularly with respect to marriage, divorce, and inheritance, and should be a priority for legal reform. In its 2009 concluding observations on Libya, the CEDAW Committee expressed "concern that legal provisions relating to personal status, in particular concerning marriage (including polygamy), divorce and inheritance, do not provide for equal rights for women and men."<sup>77</sup> The Committee went on to say that it was also "concerned that the concept of male guardianship over women seems to be widely accepted and limits women's exercise of their rights under the Convention, in particular with regard to issues of personal status both de jure and de facto."<sup>78</sup>

In some countries, equality in family laws is specifically mandated in the constitution.<sup>79</sup> In Libya, the new constitution and laws should remedy the current inequalities that give men greater rights and power in marriage, and greater rights to inheritance, than women.

In Libya, men and women do not have the same rights and responsibilities during marriage and at its dissolution. Law No. 10 of 1984 describes different rights in marriage, based on gender.<sup>80</sup> Article 17 of that law provides that a woman has the right to expect her husband to do the following:

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<sup>77</sup> CEDAW Committee, "Concluding observations of the Committee on the Elimination of Discrimination against Women, Libyan Arab Jamahiriya," February 6, 2009, para. 17.

<sup>78</sup> Ibid, para. 37.

<sup>79</sup> Article 45 (3) of Kenya's Constitution states, "Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage." (The Constitution of Kenya, 2010, <http://www.kenyaembassy.com/pdfs/The%20Constitution%20of%20Kenya.pdf> (accessed March 25, 2013).) Article 22(2) of Malawi's Constitution states, "Each member of the family shall enjoy full and equal respect and shall be protected by law against all forms of neglect, cruelty or exploitation." (Constitution of the Republic of Malawi, 1994, [http://www.wipo.int/wipolex/fr/text.jsp?file\\_id=218796](http://www.wipo.int/wipolex/fr/text.jsp?file_id=218796) [http://www.africa.upenn.edu/Govern\\_Political/mlwi\\_const.html](http://www.africa.upenn.edu/Govern_Political/mlwi_const.html) (accessed March 25, 2013).)

<sup>80</sup> The Law Concerning the Specific Provisions on Marriage and Divorce and their Consequences, No. 10 of 1984, also includes provisions on eligibility for marriage, registration of contracts, and the minimum age of marriage. Article 6 of the law provides as follows:

- a) To be eligible for marriage a person must be of sound mind and have attained the legal age of majority.
- b) To be eligible for marriage a person must be at least 20 years of age.
- c) A court may, with the consent of the guardian, approve a marriage before that age if it determines that there is a compelling interest or need.

- 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.

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 psychological 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.

While the difference in responsibilities may seem benign, there is no justification for distinguishing marital responsibilities on the basis of gender. This is contrary to article 16 of CEDAW, which stipulates that men and women have the “same rights and responsibilities during marriage and its dissolution.” Furthermore, Law No. 10 requires a person to be of “sound mind” to be eligible for marriage. This provision discriminates against women and men with mental disabilities and contravenes the right to marry for all persons with disabilities under the Convention on the Rights of Persons with Disabilities (CRPD),<sup>81</sup> which Libya has signed.

Polygamy is legal in Libya but relatively uncommon, according to women's rights activists. On February 5, 2013, the Constitutional Chamber of the Supreme Court ruled that Libya's laws governing marriage, which require a husband to obtain the consent of any current wife before marrying a second or third wife, contradicted Libya's Constitutional Declaration by contradicting Sharia.<sup>82</sup> According to the ruling, “Because the Constitutional Declaration

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A person who marries in accordance with the preceding two provisions becomes eligible to litigate in respect of any matter relating to marriage and its effects.

<sup>81</sup> Convention on the Rights of Persons with Disabilities (CRPD), adopted December 13, 2006, G.A. Res. 61/106, Annex I, U.N. GAOR Supp. (No. 49) at 65, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008., Article 23, <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx> (accessed March 25, 2013); art. 23. <http://www2.ohchr.org/english/law/disabilities-convention.htm#23> (accessed March 25, 2013).

<sup>82</sup> The court overruled certain restrictive provisions of Law No. 9 of 1994, which had amended Law No. 10, of 1984, regulating marriage and divorce. Under Law No. 9 of 1994, there must be a compelling reason or need, such as prevention of harm, for permitting marriage to a second person. The law prohibited polygamy without the written consent of the first wife and authorization from the court. Article 1 of the Constitutional Declaration states that “Islam is the Religion of the State and the principal source of legislation is Islamic Jurisprudence (Sharia).”

explicitly states that Islamic law is the principal source of legislation, no laws should be issued that violate it. [The marriage law] restricted polygamy with a set of conditions that make polygamy often impossible, thereby implicitly prohibiting it. As such, it is in violation of the constitution.”<sup>83</sup>

Some women’s rights activists are concerned that polygamy may now grow. Previous statements made by some political leaders are not reassuring. In October 2011, Mustafa Abdeljalil, then head of the National Transitional Council, called for a more pious nation and the removal of restrictions on polygamy, namely the Gaddafi law that had placed restrictions on multiple marriages.<sup>84</sup> “This law is contrary to Sharia and must be stopped,” Abdeljalil said, while pledging that the government would adhere more faithfully to Sharia. The next day he told reporters: “Sharia allows polygamy.”<sup>85</sup>

Subsequently, in a meeting with Human Rights Watch, Abdeljalil said that the existing legal restrictions on polygamy in Libya were suspended under the Constitutional Declaration.<sup>86</sup> These restrictions contravened Sharia law, he said, which according to the transitional Constitutional Declaration is the main source of legislation. “The Quran does not contain any such limitations on a man’s right to marry a second, third, or fourth wife, and so Libyan laws that create these restrictions are suspended,” Abdeljalil told Human Rights Watch.<sup>87</sup>

The Constitutional Declaration also states, though, that “Libyans are equal before the law. They shall enjoy equal civil and political rights, shall have the same opportunities, and be subject to the same public duties and obligations, without distinction” on various grounds, including sex.<sup>88</sup>

The UN Human Rights Committee has declared that “polygamy violates the dignity of women” and “is an inadmissible discrimination against women” which “should be

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<sup>83</sup>Supreme Court, Constitutional Circuit, constitutional appeal no. 03/59JY, February 2013, on file with Human Rights Watch.

<sup>84</sup> Adam Nossiter, “Hinting at an End to a Curb on Polygamy, Interim Libyan Leader Stirs Anger,” *New York Times*, October 29, 2011, <http://www.nytimes.com/2011/10/30/world/africa/libyan-leaders-remark-favoring-polygamy-stirs-anger.html?pagewanted=all&r=0> (accessed March, 25, 2013).

<sup>85</sup> Ibid.

<sup>86</sup> “Libya: Make Urgent Justice System Reforms,” Human Rights Watch news release, December 11, 2011, <http://www.hrw.org/news/2011/12/22/libya-make-urgent-justice-system-reforms>.

<sup>87</sup> Ibid.

<sup>88</sup> Constitutional Declaration, art.6.

definitely abolished wherever it continues to exist.”<sup>89</sup> The CEDAW Committee has declared that “Polygamous marriage contravenes a woman’s right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited.”<sup>90</sup>

Libya’s personal status laws have a relatively wide range of grounds for divorce for both men and women, and several provisions that apply only to women seeking divorce.<sup>91</sup> However, the law does not provide divorced women with any rights to the marital home or other property. Men typically keep the family home and other property, whereas divorced women, who are expected to return to live with their families, are often left only with their personal items and whatever property or money that was promised to them under the marriage contract, according to women’s rights activists. Under the law, divorced women “possess the right to live in adequate housing” as long as they retain custody of the children.<sup>92</sup> Once the children mature or if the divorced mother loses custody, “her right to housing is terminated.”<sup>93</sup> In general, this leaves men with far greater financial security than women after divorce.

In addition, the law requires men to pay maintenance to their wives for a period determined by the judge.<sup>94</sup> This minimal support is often not enforced and, according to Freedom House, divorced women face acute financial difficulties after divorce if they have no family to rely on.<sup>95</sup> This has obvious implications for women’s health upon divorce, as well as their vulnerability to domestic violence preceding it, as women who are threatened with poverty upon divorce may risk remaining in abusive relationships as the “lesser of two evils.”

The CEDAW Committee has stated that states parties to CEDAW are obligated to provide, upon divorce or separation, for equality between the parties in the division of all property

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<sup>89</sup> HRC, General Comment No. 28, (Sixty-eighth session, 2000), para. 24.

<sup>90</sup> CEDAW Committee, General Recommendation No. 21, Equality in marriage and family relations, (Thirteenth session, 1994), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/Go8/422/43/PDF/Go842243.pdf?OpenElement> (accessed March 24, 2013), p. 337, para. 14.

<sup>91</sup> Law Concerning the Specific Provisions on Marriage and Divorce and their Consequences, arts. 35, 39-43.

<sup>92</sup> Ibid, art. 70.

<sup>93</sup> Ibid, art. 70(b).

<sup>94</sup> Ibid, arts. 39, 51.

<sup>95</sup> Freedom House, “Women’s Rights in the Middle East and North Africa 2010 – Libya,” March 3, 2010, <http://www.unhcr.org/refworld/docid/4b99012091.html> (accessed March 25, 2013).

accumulated during the marriage. It encouraged states to provide for post-dissolution spousal payments (such as maintenance). It emphasized that the guiding principle should be that the economic advantages and disadvantages related to the relationship and its dissolution should be borne equally by both parties.<sup>96</sup>

The country's inheritance laws are based on Islamic principles, which have been interpreted to mean that a woman inherits only half of what her male counterpart receives.<sup>97</sup> This is contrary to Libya's international obligations, notably article 16(1)(h) of CEDAW, which requires that states ensure the "same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration."

The CEDAW Committee has elaborated:

There are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband's or father's property at his death than would widowers and sons. In some instances, women are granted limited and controlled rights and receive income only from the deceased's property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished.<sup>98</sup>

The Maputo Protocol provides that "women and men shall have the right to inherit, in equitable shares, their parents' properties."<sup>99</sup>

## Nationality Rights

Libya's nationality law remains ambiguous with respect to women's ability to confer their nationality upon their children if their husbands are non-nationals. This contrasts with the

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<sup>96</sup> CEDAW Committee, General Recommendation No. 29 on article 16 of CEDAW on the economic consequences of marriage, family relations and their dissolution, CEDAW/C/GC/29, February 26, 2013.

<sup>97</sup> Freedom House. "Women's Rights in the Middle East and North Africa 2010 – Libya,"

<sup>98</sup> CEDAW Committee, General Recommendation No. 21, (Thirteenth session, 1994), para. 35. The CEDAW Committee's General Recommendation No. 29 reinforced this, explaining that laws on intestate succession must provide for equal treatment of surviving females and males. CEDAW Committee, General Recommendation No. 29, para. 53.

<sup>99</sup> Maputo Protocol, art. 21(2).

situation of Libyan men, who can clearly confer their nationality to their children regardless of the nationality of their wives.

Law 24 of 2010 grants Libyan women the right to pass on their citizenship to their children,<sup>100</sup> and article 11 of this law extends Libyan nationality to children born to Libyan mothers and foreign fathers. But article 3 of the law appears to contradict article 11 by continuing to define 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. There is no mention in article 3 of children born to a Libyan mother who is married to a man who has a nationality other than Libyan.

In April 2013, the Ministry of Social Affairs reportedly suspended issuing marriage licenses for Libyan women marrying foreigners after Libya’s Grand Mufti, Sheikh Sadeq Al-Ghariani, called on the government to ban women from marrying foreigners.<sup>101</sup>

According to article 9(2) of CEDAW, states “shall grant women equal rights with men with respect to the nationality of their children.” In its concluding observations, the CEDAW Committee stated in 2009 that it “remains concerned that Libyan women married to non-Libyan nationals are not granted equal rights with men with respect to the nationality of their children.”<sup>102</sup>

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<sup>100</sup> Law on the Provisions of Libyan Nationality, No. 24 of 2010, art. 11; the law was adopted on January 28, 2010, but made public in July 2010.

<sup>101</sup> Reem Tombokti. “Government backs Mufti’s call for foreign marriage ban,” *Libya Herald*, April 14, 2013, <http://www.libyaherald.com/2013/04/14/government-backs-muftis-call-for-foreign-marriage-ban/> (accessed May 1, 2013); “Ban Libyan women from marrying foreigners: Grand Mufti,” *Libya Herald*, March 13, 2013, <http://www.libyaherald.com/2013/03/31/ban-libyan-women-from-marrying-foreigners-grand-mufti/> (accessed May 1, 2013).

<sup>102</sup> CEDAW Committee, “Concluding observations of the Committee on the Elimination of Discrimination against Women, Libyan Arab Jamahiriya,” February 6, 2009, para. 17.

## **Recommendations**

### **Recommendations to the Constituent Assembly Drafting the Constitution**

- Guarantee the new constitution includes effective protection of human rights as they are recognized internationally;
- Include in the constitution a guarantee of equality before the law;
- Include in the constitution guarantees of nondiscrimination including on the basis of sex, gender, pregnancy, and marital status;
- Make clear that all laws in Libya are subject to the constitution's guarantees of equality and non-discrimination and other human rights; and
- Hire a gender advisor to help ensure the draft constitution meets international standards of human rights.

### **Recommendations to the Government of Libya**

- Urge the GNC to remove reservations to CEDAW;
- Guarantee effective protection of human rights as they are recognized internationally, including those of equality and nondiscrimination;
- Take concrete steps to address the educational and informational needs of marginalized groups of women, including women who live in remote and rural areas, illiterate women, women who do not have access to the Internet, elderly women, and women with disabilities;
- Assist in building the capacity of female election candidates, who require enhanced support to address the barriers that they face, and develop capacity-building initiatives such as campaign management or leadership training for female candidates; and
- Train security officers on identifying and responding to gender-based threats and abuses at polling sites.

### **Recommendations to the General National Congress**

- Remove reservations to CEDAW;
- Safeguard women's security and participation as both candidates and voters in upcoming elections and referendums. The GNC should ensure that women are

involved in the entire constitutional drafting process, including by the inclusion of women members in the Constituent Assembly;

- Hire a gender expert as an advisor to the Constituent Assembly;
- Amend current penal code provisions that classify sexual violence as a “crime against a woman’s honor,” rather than against the woman as individual victim or as a violation of her bodily integrity;
- Repeal article 375 of the penal code, which contains less severe criminal sentencing provisions for perpetrators of so-called honor crimes;
- Repeal or amend *zina* laws, which are codified in the penal code and Law No. 70 (1973);
- Amend existing personal status laws that discriminate against women, particularly with respect to marriage, divorce, and inheritance;
- Amend Libya’s nationality law to remove any ambiguities with respect to women’s ability to confer their nationality upon their children if their husbands are non-nationals;
- Enact a specific set of laws explicitly criminalizing all forms of family violence; and
- Ensure that future electoral laws require that voting facilities and procedures be accessible for voters with disabilities.

## Acknowledgments

This report was researched and written by Samer Muscati, researcher for the Women's Rights division. Amena Raghei, intern for the Middle East and North Africa division, and Dina Chehata, assistant research fellow for the Women's Rights division, provided extensive research support.

The report was reviewed by Liesl Gerntholtz, women's rights director, and Janet Walsh, women's rights deputy director; Fred Abrahams, special advisor; Malcolm Smart, consultant for the Middle East and North Africa division; Hanan Salah, researcher for the Middle East and North Africa division; Shantha Rau Barriga, senior researcher on disability rights; Clive Baldwin, senior legal advisor; and Tom Porteous, deputy program director. Camille Pendley, associate for the Women's Rights division, assisted with final proofreading, footnoting, and formatting. Amr Khairy, Arabic language website and translation coordinator, arranged for translation of this report and related materials into Arabic. Ivy Shen provided assistance with the photo essay. Lara Yeo, intern for Women's Rights, Faris Al-Sulayman, intern for the Middle East and North Africa division, and Matthew Rullo, coordinator for Women's Rights, assisted with research and footnoting. Layout and production were coordinated by Grace Choi, publications director; Fitzroy Hepkins, administrative manager; and Camille Pendley.

The Women's Rights division of Human Rights Watch gratefully acknowledges the financial support of Donna and Gary Slaight, the Ford Foundation, and other supporters.



# A REVOLUTION FOR ALL

## Women's Rights in the New Libya

With the drafting of a new constitution and legislative reform about to begin, Libyan women find themselves at a pivotal juncture in their country's history. Women played a crucial role in the uprising that led to the overthrow of Muammar Gaddafi and have contributed greatly to the political transition, including as members in the new parliament. But concrete steps are urgently needed to ensure that women's rights are respected in the new Libya and that discrimination based on gender is firmly rejected by law. A Revolution for All spells out what those steps are.

First, women need to have their rightful seat at the table to discuss the critical issues of legal and political reform. In particular the Libyan government and parliament should take steps to ensure that women have the right to participate on equal terms with men in the upcoming constitution drafting process that will likely proceed this year. Second, the new constitution should guarantee the right of women to enjoy full equality with men, and prohibit discrimination based on gender. Third, parliament should repeal or amend the host of Gaddafi-era laws and regulations that discriminate against women. Finally, the government should prioritize ending discrimination against women and impunity for violence against women, including domestic violence.

*(above) On the eve of Libya's first democratic national election, Haja Nowara held a vigil in the square outside the courthouse in Benghazi, where she had spent many evenings supporting the revolution since early 2011. "I have waited my whole life for tomorrow, which will be a new day for Libya," said Nowara, who would be voting for the first time in her life. "We sacrificed a lot to get here."*

*(front cover) University professor and candidate Abir Imnina speaking at an event in Benghazi to support female candidates before the 2012 election. She proposed that elections in the transition years include quotas for women to ensure their participation in politics. The 2012 GNC electoral law included a requirement that each party run an equal number of male and female candidates.*

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