



# LIBYA

by Alison Pargeter

POPULATION: 6,283,000  
GNI PER CAPITA: US\$10,078

| <b>COUNTRY RATINGS</b>                         | <b>2004</b> | <b>2009</b> |
|--|-------------|-------------|
| NONDISCRIMINATION AND ACCESS TO JUSTICE:       | 2.4         | 2.4         |
| AUTONOMY, SECURITY, AND FREEDOM OF THE PERSON: | 2.6         | 2.6         |
| ECONOMIC RIGHTS AND EQUAL OPPORTUNITY:         | 2.4         | 2.8         |
| POLITICAL RIGHTS AND CIVIC VOICE:              | 1.8         | 1.8         |
| SOCIAL AND CULTURAL RIGHTS:                    | 2.4         | 2.5         |

(COUNTRY RATINGS ARE BASED ON A SCALE OF 1 TO 5, WITH 1 REPRESENTING THE LOWEST AND 5 THE HIGHEST LEVEL OF FREEDOM WOMEN HAVE TO EXERCISE THEIR RIGHTS)

## INTRODUCTION

Libya has been ruled by Colonel Muammar al-Qadhafi since he came to power in a bloodless coup in 1969. He has organized the country's political landscape around his personal interpretations of Arab nationalism, socialism, and Islam, which are laid out in a treatise known as the *Green Book*. In March 1977, al-Qadhafi declared the establishment of the authority of the people and introduced a unique political system called the Jamahiriya (State of the Masses). Under this system, every Libyan citizen ostensibly participates in the ruling structure through membership in local congresses, the decisions of which are fed up into the General People's Congress (parliament). Al-Qadhafi himself has no formal position or title, preferring to refer to himself as "Brother Leader" or "Leader of the Revolution." In reality, however, he retains complete control of the state apparatus.

Libya spent much of the 1980s and 1990s in relative isolation, with United States and United Nations sanctions in place due to the country's involvement in a series of terrorist bombings. However, following the Libyan government's decision in April 1999 to hand over the two suspects in the 1988 bombing of a U.S. airliner over Lockerbie, Scotland, for trial in The Hague, Libya began to rebuild its relations with the international community. Its rehabilitation took a major leap forward in December 2003,

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when the regime announced that it would abandon its nuclear, chemical, and biological weapons programs. The United States lifted most unilateral sanctions in 2004, and finally removed Libya from its State Sponsors of Terrorism list in 2006. Libya has since been working to fully reintegrate itself into the international community and to modernize and upgrade its national infrastructure, which had deteriorated during the years of sanctions. However, despite its achievements at the diplomatic level, Libya has made little progress in instituting genuine political or economic reform on the domestic front. The regime made certain promises of reform in the realms of human rights, personal freedoms, and economic liberalization, but Libya is still a highly centralized state in which al-Qadhafi's revolutionary ideology remains paramount.

As part of his bid to overhaul Libyan society, al-Qadhafi has sought to promote the status of women and to encourage them to participate in his Jamahiriya project. Some of his most progressive policies have directly challenged the prevailing conservatism in Libya, though his regime at times has struck a conciliatory tone with the Islamist political opposition and the conservative populace at the expense of women's rights. In his *Green Book* he asserts the equality between genders and strongly denounces discrimination. Paradoxically, the tome also makes note of the biological differences between men and women and declares that the two genders cannot be equal.<sup>1</sup>

Nevertheless, al-Qadhafi has pushed for women to become equal citizens and has introduced legislation aimed at reducing discrimination between the sexes. He has also sought to provide women with greater access to education and employment. As a result, women in Libya are now better able to participate in the country's political, economic, and social life.

These efforts by the state have run against Libya's extremely conservative patriarchal traditions and tribal culture, which continue to foster gender discrimination. Indeed, given the broader gap that exists between the regime and the population, there is a sense among many Libyans that the authorities are attempting to foist certain liberal values on the country without consent, and this has only strengthened societal adherence to conservatism and traditional religious principles. Such resistance has led the regime to cede ground on some gender issues in order to bolster its own legitimacy. For example, women still face unequal treatment in many aspects of family law.

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An independent women's rights movement might be more successful in gaining credibility and sympathy among the public, but the authorities do not permit any genuinely independent organizations or political groups to exist. Membership in any group or organization that is not sanctioned by the state is punishable by death under Law No. 71 of 1972. There are a number of women's organizations in Libya that purport to be independent, but they are all in fact closely linked to the state. Consequently, their efforts to promote women's emancipation have yielded little progress.

Some positive developments in terms of women's rights have occurred in the past five years, such as the state's attempts to promote a greater awareness of domestic violence and the fact that more women are entering the workforce. However, women's rights have been at times threatened, as in the instance where the government temporarily restricted women from leaving the country without their male guardian, a step that the authorities later denied. Moreover, there has been no fundamental shift in societal attitudes or behavior in that time, and the gulf between the rhetoric of the regime and the reality on the ground remains as wide as ever.

## **NONDISCRIMINATION AND ACCESS TO JUSTICE**

Although the government claims to have eliminated gender-based discrimination under Libyan legislation, women remain treated unequally in some aspects of the law, notably within provisions of family law that uphold the principles of Shari'a (Islamic law). Moreover, women face discrimination within the judiciary due to social attitudes and prevailing cultural values, and legislation designed to protect women is often not implemented in practice. Women are often treated as minors under the guardianship of their fathers or other male relatives, a cultural and in some cases legal reality that has remained unaltered in recent years.<sup>2</sup> Meanwhile, Libyan women who are married to non-Libyan men now face even greater disadvantage due to the new state-imposed fees for the schooling of their children.

Libya has no constitution, despite recent attempts by al-Qadhafi's son, Saif al-Islam, to develop one. Instead, the country's basic legal framework consists of a series of laws and key declarations, such as the 1977 Declaration of the Authority of the People and the 1988 Great Green Charter of Human Rights in the Age of the Masses (Great Green Charter).

These documents assert the equality of all citizens before the law. The Great Green Charter, for example, stipulates that men and women “are equal in everything which is human. The distinction between men and women is a flagrant injustice which nothing justifies.”<sup>3</sup> However, portions of the Green Book seem to contradict this by stressing the biological differences between men and women, asserting, “man and woman cannot be equal.”

In addition, Article 1 of Law No. 20 of 1991 asserts that the citizens of the Jamahiriya, both male and female, are free and equal in respect of their rights, and that these rights may not be violated.<sup>4</sup> The Charter on the Rights and Duties of Women in Jamahiriya Society—which was approved in 1997 and is considered one of the most important legislations that relates to women—includes provisions to guarantee the equal rights of men and women in areas such as national security duties, marriage, divorce, child custody, the right to work, social security, and financial independence.<sup>5</sup> It also guarantees women the right to participate in the country’s governing institutions. These proclaimed rights, however, are undermined by specific laws that govern family life, such as the law that permits men to practice polygamy, which discriminate against women (see “Autonomy, Security, and Freedom of the Person”).

Women have the right to full and equal status as citizens and enjoy the same rights as men regarding the right to acquire, change or retain their nationality, or replace it with another nationality. A Libyan woman forfeits her citizenship only if she wishes to adopt her foreign husband’s nationality. However, unlike Libyan men, Libyan women do not have the right to transfer their nationality to their foreign-born spouses or the children of such unions. While the children of a Libyan father and foreign mother are granted Libyan nationality, children of a Libyan mother and foreign father are not and require visas to enter the country if they reside abroad.

In 2007 the government issued a decree ruling that children of Libyan mothers and non-Libyan fathers cannot attend public schools unless they pay a fee of 800 dinars (US\$646). However, the General People’s Committee, the executive arm of government, later ruled that fees may be waived for families that cannot afford them.<sup>6</sup> Families headed by Libyan mothers and foreign fathers are also discriminated against in that they are deprived of a family book (official documentation that permits access to certain state benefits such as subsidized food) and are not permitted to obtain loans. They are similarly excluded from state payments to families following the birth of a child.

Libya's judicial system consists of four types of courts: the summary courts, which are the courts of first instance; the primary courts; the courts of appeal; and the Supreme Court, which is the apex of the judicial structure and hears civil, commercial, criminal, administrative, and personal status cases. Al-Qadhafi merged civil and Shari'a courts shortly after coming to power, so these courts, all of which are civil in nature, have jurisdiction over family cases. There are also 10 special courts in Tripoli and Benghazi that deal only with personal status cases. The rationale for having these separate courts is to "respect women's special position and avoid women mixing with criminal elements."<sup>7</sup> In other words, they are intended to provide protection and a sense of security to women who bring legal cases on issues like divorce and child custody.

Although women and men have an equal right of recourse to the law and an equal right to pursue legal proceedings, and although an adult woman is generally recognized as a full person before the court, women continue to find themselves at a disadvantage due to cultural traditions. They typically consult with a male relative before taking legal action, and it is still accepted practice for a man to take legal action on a woman's behalf. A woman has the right to challenge discriminatory actions by the state and claim compensation should the courts rule in her favor. However, it is difficult to determine whether women actually file such claims, as court records are not easily accessible by the public.

Women have been eligible to become judges since 1981, although they remain underrepresented in the judiciary. The first female judge was appointed in 1991, and currently there are an estimated 50 female judges.<sup>8</sup> Women are free to work as lawyers, public prosecutors, and case administrators, and their representation in the legal profession is increasing. However, no female jurists have been appointed to the Supreme Court.

Libya has been developing a new draft penal code since 2003, but there has been little news of its progress; the General People's Congress must agree to the draft before it becomes law. Although the existing penal code applies equally to both men and women, they are treated differently in some cases such as adultery.<sup>9</sup> Both guilty partners face a possible penalty of 100 strokes of the whip, but Article 375 allows for a reduced punishment for a man who kills a female relative on account of her having committed adultery. Article 375 also asserts that if the man only inflicts bodily harm on the female relative, the prison sentence is limited to a maximum of two years, and a lesser beating or light injury should not be penalized at all.

Despite this leniency, so-called “honor killings,” in which a male relative kills a woman for moral or sexual transgressions, are not common in Libya.

An adult woman is recognized as a full person before the court and is equal to a man throughout all stages of litigation and legal proceedings. However, in some instances, women are not considered to be as authentic witnesses as men. Common interpretations of Islamic principles assert that one male witness is equivalent to two females. Moreover, the testimony of a woman cannot be used to establish the crime of *zina* (extramarital sexual relations), illustrating at least one circumstance in which a woman's worth before the court is less than that of a man.<sup>10</sup>

Women suspected of engaging in oppositional political activity are subject to arbitrary arrest, detention, and exile. Although it is generally assumed that women do not engage to any significant extent in such activities, those suspected face the same penalties as men. However, women are subject to a form of gender-specific confinement in “social rehabilitation” homes for young women who have broken moral codes or who are “vulnerable to engaging in moral misconduct.”<sup>11</sup> Women are transferred to these facilities by the public prosecutor and in some cases are detained there against their will. Others who have been raped or become pregnant out of wedlock enter the facilities voluntarily because they fear their families' reactions to their situations. Officially, these women are free to leave the rehabilitation homes when they turn 18 years old, when they consent to marriage, or when a male relative agrees to take them in. However, there is no limit on the length of time that the government can hold women in these facilities.<sup>12</sup>

Mohammed Youssef al-Mahatrash, the head of prosecutions in Tripoli, explained in 2005 that a resident of a rehabilitation home “can't leave when she wants. We don't let them go out in the street where there is no protection for them. It [the social rehabilitation facility] is a type of protection for them.”<sup>13</sup> There is no mechanism for women to appeal their transfer into these facilities.

The women and girls in these centers also undergo other human rights abuses. For example, upon entering they are routinely tested for communicable diseases without their consent, and most are forced to endure invasive virginity examinations.<sup>14</sup> Although some of those sent to such facilities are school-age teenagers, they receive no education other than religious instruction aimed at “reforming” their moral character.

Libya acceded to the UN Convention on the Elimination of All Forms

of Discrimination against Women (CEDAW) in 1989. At that time, it made reservations to Article 2 and Article 16, in relation to rights and responsibilities in marriage, divorce, and parenthood, on the grounds that these articles should be applied without prejudice to Shari'a. Libya made an additional general reservation in 1995, declaring that no aspect of accession can conflict with the laws of personal status derived from Shari'a.<sup>15</sup>

In June 2004, Libya became the first country in the Arab region to ratify the Optional Protocol to CEDAW.<sup>16</sup> The protocol allows Libyan groups and individuals to petition the UN CEDAW committee if they believe their rights under the convention have been violated.<sup>17</sup> However, because the committee can only issue nonbinding recommendations to states in response to these petitions, the practical effects of the protocol remain unclear.

There are no genuinely independent nongovernmental women's rights groups in Libya. Several women's organizations claim to be independent, such as Al-Wafa Association for Human Services, which seeks to improve the status of women and "to further women's education and social standing."<sup>18</sup> However, all such organizations have close ties to the authorities. The charity Al-Wattasimu, for example, organized an international conference on women's rights in Tripoli in April 2007. Participants sought to draft new concepts and principles on women's rights and "to realize a strategic support group project for African women."<sup>19</sup> Al-Wattasimu is run by Aisha al-Qadhafi, the daughter of Muammar al-Qadhafi.

### *Recommendations*

- ❖ The government should amend Article 375 of the penal code to ensure that any man who kills or inflicts bodily harm on a female relative following alleged sexual transgressions does not receive a reduced punishment.
- ❖ The government should set up specialized support centers in all major cities that offer free legal advice to women.
- ❖ The government should implement a nationwide program to improve legal literacy among girls and women through media and leafletting campaigns.
- ❖ The government should close down the existing social rehabilitation centers and ensure that women are not sent to or held in any such facilities against their will. It should instead establish support networks and shelters that provide opportunities for education, childcare, and

job training to women who have become pregnant outside of marriage or who have been ostracized by their families for “immoral” behavior.

- ❖ The state should permit the formation of truly independent nongovernmental organizations dedicated to advancing women’s rights.

## **AUTONOMY, SECURITY, AND FREEDOM OF THE PERSON**

The Libyan state has sought to promote women’s autonomy and independence, and it has taken some steps to address violence against women. However, women’s personal freedom and security remain limited in practice, and there has been little concrete progress on these issues in recent years. This is largely due to the traditional nature of Libyan society, which places huge social pressures on women to preserve their honor. Indeed, the honor of the entire family rests upon the extent to which its female members comply with social and moral norms. Women’s security is also restricted in that domestic violence and rape are still considered taboo subjects that should be kept within the domain of the family. Elements within the government attempted to restrict freedom of movement for women in 2007, but they were soon forced to retract their position after an outcry in the official media and other parts of the regime.

Islam is the declared state religion, and Libya broadly follows the Maliki school of Sunni Islam. Women have the right to practice Islam freely, although the state does not tolerate any religious activity that is deemed to have a political dimension. The regime is deeply concerned about the threat of political Islam, especially that of a militant nature. Anyone suspected of having such tendencies—male or female—risks persecution. Although overt displays of religiosity, such as the *niqab* (veil that covers all but the wearer’s eyes), may draw the attention of the authorities, they are not banned outright. In May 2008, the authorities of Gar Younis University in Benghazi posted a decision warning female students not to wear the *niqab* because it was being used as a disguise by “immoral women,” namely prostitutes.<sup>20</sup> The decision also warned women not to wear makeup or mix with members of the opposite sex. However, this appears to have been a localized incident that reflects the arbitrary nature of Libyan governance.

The government is broadly tolerant of other faiths, and there is a small Christian community made up primarily of foreigners. However, the state is far less accepting of Muslims who convert to Christianity and has imprisoned a small number of such converts in recent years. Society

is also uncomfortable with the idea of conversion, and any woman wishing to convert to Christianity would find it difficult to practice her new religion freely. A non-Libyan man must convert to Islam in order to marry a Muslim Libyan woman, while a non-Libyan woman is not required to convert if she marries a Muslim Libyan man. Atheism is generally not deemed acceptable by society.

Women have the right to freedom of movement and are not legally required to secure the permission of their husbands or male relatives to obtain passports.<sup>21</sup> Married women are able to travel with their children without the permission of their husbands. However, a Libyan husband may ask the authorities to prevent his wife from leaving the country with their children if there is a specific family dispute and the father fears that the mother may take the children away. In practice, many Libyan women travel only in the company of their husbands or male relatives due to the patriarchal nature of society. Those who are part of the social elite may have more freedom in this respect, but even they are expected to secure permission from a male relative to travel abroad. As a practical matter, women also face restrictions traveling inside Libya, as many hotels will not let rooms to unaccompanied women.

In March 2007, the state-owned newspaper *Al-Jamahiriyah* reported that the authorities had introduced travel restrictions prohibiting women under the age of 40 from leaving the country without being accompanied by their husbands or a close male relative, prompting public outcry.<sup>22</sup> However, the government denied this act several days later, stating that the regulation had been an old and temporary remedy to address the problem of young girls traveling abroad.<sup>23</sup> The initial move seems to have been an isolated and arbitrary decision made by certain elements within the regime.

Social traditions also restrict women's day-to-day freedom of movement. For example, a woman walking in public after dark is expected to be accompanied by a male relative or another female. Without such escorts, she risks verbal harassment for what is considered the behavior of a "loose" woman. Unmarried women are generally expected to give their families the details of any excursion outside the home. Women also find it difficult to go to the beach and to swim on account of the male attention their presence would attract. There are a number of women-only beach resorts and swimming pools, and other facilities reserve certain days for women. These, however, tend to be the domain of the rich. Women from rural areas and small villages have far less freedom in this respect.

Family laws in Libya are, in part, based on the Maliki school of jurisprudence. The roles of men and women in marriage are established in Law No. 10 of 1984, which proscribes different rights based on gender. The husband is granted the right to his wife's "concern with his comfort and his psychological and sensory repose," and she is also tasked with the "supervision of the conjugal house and organization and maintenance of its affairs."<sup>24</sup> The wife is not granted reciprocity on these issues, but she is entitled to financial maintenance from her husband, control over her private wealth, and the right to be free from mental or physical violence.<sup>25</sup>

Women are legally empowered to negotiate their marriage rights, but their ability to do so in practice is often curtailed by cultural norms. Article 21 of the Great Green Charter prohibits forced marriage and describes marriage as "an equitable association between two equal partners." Article 8 of Law No. 10 of 1984 also states that a guardian "may not compel a young man or young woman to marry against his or her will."<sup>26</sup> The same article states that a guardian cannot prevent a prospective bride from marrying the prospective husband of her choice. If a guardian refuses permission without an acceptable legal reason, she may bring the matter to the court.

Nonetheless, tradition dictates that a woman should obtain the permission of her father or male guardian before she marries. Women who are of an appropriate age for marriage are generally put under "severe monitoring" by their families to ensure that they uphold their honor and, by extension, that of the entire family. Marriage is often deemed to be of greater importance than education or employment, as according to traditional norms, "marriage is the standard whereby the success of a woman can be measured."<sup>27</sup>

Most marriages in Libya, particularly outside of urban areas, are arranged through family and friends. Online dating, or at least chatting romantically, has become more common in recent years as Internet access has expanded somewhat. A minority of young people, most of whom live in Tripoli, are now more likely to date in public places such as cafes in shopping malls. However, this generally occurs without the knowledge of parents, given the social stigma attached to such behavior.

According to Article 6 of Law No. 10 of 1984, the minimum age of marriage is 20, although younger people can marry if a court and the woman's guardian grant permission.<sup>28</sup> Girls living in rural areas are particularly likely to marry young, but on the whole, Libyan women increasingly face the opposite problem. Low salaries and limited employment

opportunities are compelling men to wait until they are older to marry, because they must be able to financially support a wife. Many men, especially those from low-income families, do not achieve the requisite level of financial stability until they are in their 30s, which forces women to wait longer to marry their fiancés. Although the trend toward later marriage is also attributable to the fact that some women have chosen to complete their education and enter the workforce before marrying, financial concerns remain the driving force behind this shift. Women over the age of 30 are generally considered to be past the acceptable age for marriage. Consequently, although the increase in late marriages affects both sexes, women tend to suffer more from the phenomenon.<sup>29</sup>

Article 3 of the 1984 law permits either prospective spouse to insert stipulations in the marital contract, so long as they do not contradict the purpose or aims of marriage. Such stipulations could theoretically include, for instance, the wife's right to work outside the home or complete her education, but in practice few women insist on special conditions in their marriage contracts.

Polygamy is permitted under Libyan law. A man may take a second wife if the existing wife agrees to the union in court, and if the court grants its permission. In some exceptional circumstances the court may authorize the second marriage in the absence of the existing wife's permission. However, polygamy is rare in practice in Libya, and al-Qadhafi has spoken out against it.

Law No. 70 of 1973 criminalizes fornication, and both men and women may be prosecuted for engaging in sexual relations outside of marriage, the punishment for which is flogging.<sup>30</sup> In October 2007, a Libyan government representative told the UN Human Rights Committee, which oversees the International Covenant on Civil and Political Rights, that Law No. 70 is based on the Koran and that the right to freedom of belief does not mean fornication should be practiced in society.<sup>31</sup> Although few people are punished for fornication, women who are discovered to have engaged in illicit sexual relations often find themselves shunned by society and their families, and are deemed to have violated the family's honor.

Unlike in most other Arab states, where a man can divorce his wife by declaring his intent three times before a witness, Libyan law holds that men must also petition the court in order for the divorce to be valid.<sup>32</sup> In keeping with Article 21 of the Great Green Charter, which requires mutual consent or a "fair judgment" for the execution of a divorce, the court will

grant a divorce if both parties agree to it or if the petitioner is able to establish grounds for divorce based on certain legally defined reasons.<sup>33</sup> In cases where the parties cannot agree to a divorce, the court will first assign arbitrators (preferably from the two families) in an effort to reconcile the couple. If this fails, the court then has discretion to grant a divorce.

The legitimate reasons for which a woman may petition for divorce include the husband's inability to maintain her financially, absence without justification, or unjustified abandonment for a period of four months. Either party may petition for divorce if the other is unable to consummate the relationship. Under Article 48 of Law No. 10 of 1984, Libyan women also have the right to *khula*, a process that allows the wife to divorce her husband on other grounds, provided she is willing to give up financial rights including her dowry and maintenance.

If the court deems the woman to be the cause of the divorce, she forfeits her right to *sadaq* (deferred dowry payment) and custody of the couple's children. If the court deems the man to be at fault, he is obliged to pay his wife compensation as well as the *sadaq* agreed to at the time of marriage. After a divorce has been granted, the law imposes on the husband a duty to maintain his wife financially for a certain period, regardless of how wealthy she may be. Nonetheless, this rule is not often enforced in practice, and divorced women face acute difficulties if they have no family to rely on.

Although women are permitted to represent themselves before the court during divorce proceedings, in practice they are usually represented by a male family member. Divorce is still considered to be a family affair, meaning a woman's ability to secure a divorce is often dependent on the extent to which her family supports her decision. Moreover, it is generally easier for men to secure a divorce than women, and society is more accepting of divorced men than divorced women. However, as women have become more financially independent in recent years, they have grown more capable of pushing for divorce than they were in the past.

If a couple separates based on mutual agreement, the mother has custody of daughters until they marry and of sons until they reach puberty. If the mother is unable to exercise this right, custody transfers to her mother, then to the father, then to the father's mother, then to closely related females, and finally to closely related males. A father must provide financial support to his children unless they have private assets. Although the law favors granting custody to mothers, traditional norms favor the

father; judges tend to use their discretion to enforce the latter, especially if the mother is not Libyan.<sup>34</sup>

Domestic violence is a problem in Libya. Article 17 of Law No. 10 of 1984 states that husbands should not cause physical or mental harm to their wives, but Article 63 of the penal code stipulates that evidence of injury is needed to prove assault.<sup>35</sup> As in most conservative societies, domestic violence remains a taboo issue, and its public airing is deemed to be something shameful that brings dishonor upon the victim as well as her entire family. At the official level, certain elements have been unwilling to acknowledge that violence against women exists. As the deputy of the Social Affairs Secretariat has stated, “We don’t have violence against women . . . if there was violence, we would know.”<sup>36</sup> Similarly, another Libyan official once explained to the UN Committee on the Rights of the Child that no organizations in Libya specifically defend the rights of women because “women did not suffer from discrimination and that kind of organization therefore served no purpose.”<sup>37</sup> However, awareness regarding this issue has grown in recent years, and the state has made some efforts to educate the population. In March 2007, the charity Al-Wattasimu launched a cultural project in Tripoli on women’s equality that included a number of forums and publications related to violence against women.

Despite these efforts, many women do not raise complaints about domestic violence due to the social stigma attached to the issue. Women generally fear that they will be rejected by their husbands and extended families should they come forward with accusations. One senior Libyan judicial official said that 99 percent of victims who filed domestic violence complaints eventually withdrew their cases.<sup>38</sup> There are no shelters for victims of violence in Libya. Spousal rape is not a crime, and like other forms of domestic abuse, such cases are considered private matters that carry a great deal of shame if publicly reported.

Gender-based violence that occurs outside the home is also deemed to be a matter of disgrace, and the female victim is often held responsible for the actions of the perpetrator. Only the most heinous of rapists are prosecuted, and rape victims themselves risk prosecution for extramarital sexual relations if they attempt to press charges.<sup>39</sup> A rapist is expected to marry his victim to “save her honor” as a “social remedy.” The woman’s consent is needed for such a marriage, but given the reality of social pressures, she effectively has no option but to marry the perpetrator. Most families prefer

to conceal any violation of the woman's honor, and such matters are rarely discussed outside of the home. Moreover, the regime's denials regarding the existence of violence against women extend to crimes like rape. The deputy director of social affairs in the General People's Congress, Amal Safar, declared in 2005 that "violence and rape is very rare. You might find two cases [in Libya] from people belonging to non-Libyan cultures."<sup>40</sup>

There are no genuinely independent women's organizations working on the issues of women's autonomy and security, and no women's shelters exist aside from the social rehabilitation centers described above. Aisha al-Qadhafi's Al-Watassimu charity, which maintains close ties to the government, has worked to raise awareness of violence against women with limited success. The project it launched in March 2007 included promoting the issue in mosques, schools, and other public places.<sup>41</sup>

### *Recommendations*

- ❖ The government should introduce laws that specifically define and criminalize domestic violence and rape, including spousal rape.
- ❖ The government should raise awareness of domestic violence through public campaigns using various media, including television soap operas, in a bid to dispel taboos surrounding the subject.
- ❖ The Qadhafi Development Foundation should establish an association specifically designed to raise awareness about domestic violence and to reduce the taboos associated with it.
- ❖ The country's religious authorities should initiate a public education campaign aimed at eliminating the perception that violence against women is religiously acceptable.
- ❖ The police force should receive adequate training on how to deal with domestic violence and rape cases, and set up special units to handle these crimes.
- ❖ The government should open well-resourced shelters for women who have been victims of domestic violence.

## **ECONOMIC RIGHTS AND EQUAL OPPORTUNITY**

In recent decades, the government has encouraged women to participate in the workforce and to exercise their economic rights. They have increasingly done so, and some women, particularly among the elite, have been able to break into fields traditionally dominated by men, such as law,

medicine, and business. Women have also made academic gains, attending universities in greater numbers. However, women remain underrepresented in the labor market, and those who are employed tend to work in fields traditionally associated with women, such as education. Society in general still considers women's primary role to be in the home. While more young women in Libya aspire to pursue professional careers, their working lives are often cut short when they marry. Moreover, husbands still tend to manage the family's financial affairs, though younger women are increasingly in control of their own salaries.<sup>42</sup>

Women in Libya have the same rights to own land and property as men, and they are free to buy and sell both. As mentioned above (see "Autonomy, Security, and Freedom of the Person"), women have the right to retain their private wealth upon marriage. However, given that men are usually responsible for land and property in accordance with dominant social traditions, only women of a higher social class tend to have control over their own financial affairs. Women are free to obtain bank loans and financial credit, and banks do not require the consent of the husband to issue a loan to a woman. In 2007 the Rural Bank granted 19,558 loans, of which 4,502 went to women.<sup>43</sup>

Women also have the right to full and independent use of their income and assets, but it is not uncommon for women to give their income to their husbands or other family members. According to one survey, out of 200 women questioned, only half kept their salaries.<sup>44</sup> The other half either handed over all their income to a male family member or gave up most of it after taking a cut for themselves.

The inheritance rights of women are not equal to those of men. Libya's inheritance laws are based on Islamic principles whereby a woman inherits only half of what is due to her brothers. In addition, it is not unusual for a woman to give her share of inheritance to her brothers, in part to ensure that the brothers will financially support her should she remain unmarried or find herself divorced or widowed.

Women are free to enter into business contracts and economic activities at all levels. They are increasingly participating in Libya's business sector, though it remains dominated by men. Most businesses that are owned by women are small, and many are private schools, sewing workshops, or import-export agencies.<sup>45</sup>

Libya has made women's education a key priority over the years. The state's decision to make education compulsory through the intermediate

level in the 1970s benefitted girls in particular, and female students currently tend to outperform male students. Within secondary education, the enrollment ratio of girls to boys has gone up significantly in recent years, from 106.1:100 in 2002 to 117.1:100 in 2006.<sup>46</sup> A significantly larger number of girls than boys pursue higher education. For the 2007–08 academic year, 101,537 women were enrolled in a university, compared with 59,179 men.<sup>47</sup> This represents a marked increase from the 2004–05 academic year, when 87,752 women and 62,419 men were enrolled in a university.<sup>48</sup> Women are permitted to enter all fields of study, and admissions requirements are nondiscriminatory. Schools and universities are not segregated by gender.

However, the entire public sector is currently undergoing a major restructuring following a speech made by al-Qadhafi, and this has raised concerns regarding the future of women's education in Libya. In the March 2008 speech, he announced that the administration should be dismantled and that responsibility for public services, including education, should be handed directly to the population. It is unclear what form this restructuring will take, or indeed whether it will occur at all. The future of the country's education system is particularly uncertain because al-Qadhafi also announced that education would no longer be compulsory. No related legal changes or attempts to pursue this policy shift have been made to date, but should the proposal become a reality, it would likely have a greater impact on girls than boys. Without the legal obligation to educate their daughters, some families would revert to conservative social practices and choose not to send their girls to school, particularly beyond the primary level.

Women generally have the freedom to choose their profession, and they are encouraged by the regime to join the workforce, although some gender-based restrictions persist. The Resolution of the General People's Committee of 1988 states that work is a duty for every woman who is capable of working. The Consolidation of Freedoms Law (No. 20 of 1991) stipulates that men and women are free to choose the work that suits them. Al-Qadhafi has specifically encouraged Libyan women to work in the military, and there are special female police forces, bodyguards, and military academies. Such roles are considered shameful because many Libyans deem them to be contrary to cultural tradition. Women still require the permission of their fathers to enter the women's police academy.<sup>49</sup>

Article 95 of the Labor Law (No. 58 of 1970) stipulates that women may not be employed in difficult or dangerous jobs. Under Article 96, Libyan women may not work more than 48 hours a week including overtime, nor can they work between 8 p.m. and 7 a.m. unless authorized by order of the Workforce, Training, and Employment Secretariat in the General People's Committee. As a result, some hospitals and clinics employ foreign women, to whom these provisions are not applicable.

According to the International Labour Organization, the female labor force participation rate was 27.3 percent in 2007, up from 25.6 percent in 2004 and 23.9 percent in 2000.<sup>50</sup> Despite the government's official stance on women's employment, which welcomes diversity in their choice of profession, women continue to work predominantly in fields that are traditionally associated with females, such as education, health services, and secretarial or cleaning work. Furthermore, Libyan men often prefer that their female family members work in jobs that do not entail mixing with the opposite sex.<sup>51</sup> They also prefer that women not work too far from the home, further limiting the options available to female professionals.

Under Section 31 of the Labor Law, men and women should receive equal pay if the nature and conditions of their work are the same.<sup>52</sup> However, in reality women are often paid less than men for doing the same job. It is still difficult for women to attain high-ranking positions in their professional life, and both men and women often exhibit resistance to the idea of women holding positions of authority over men. Even within fields that are traditionally associated with women, senior jobs tend to be awarded to men. In spite of the large numbers of women who work in the higher education sector, only a few attain the level of professor or lecturer. During the 2007–08 academic year at Sebha University, for example, there were 51 male and no female Libyan professors or associate professors, and 92 male but only 11 female lecturers.<sup>53</sup>

Professional women face many challenges both in the public and private sectors. As one female employee in a government investment company told the British Broadcasting Corporation (BBC), "Our society is very conservative and patriarchal. . . . It is unusual for a woman to live on her own and work in the public sector. I struggle all the time to overturn the stereotype of women working only as secretaries. . . . As a result my ability to do my job is often hindered and made difficult. I deal with bureaucratic and chauvinistic obstacles every day."<sup>54</sup> Within the private sector, which

was banned until recently and is therefore generally underdeveloped, the status of women is far less clear.

No legislation exists to protect women from sexual harassment in the workplace. However, women have specific rights and protections related to maternity and childcare. A pregnant woman is entitled to one month's leave at full salary before the due date of her child, and under Article 43 of the Labor Law, women who have worked for the same employer for at least six months are entitled to what is known as "birth leave," during which they are paid 50 percent of their salary for 50 days.<sup>55</sup> In addition, under Article 25 of the Social Security Act (No. 13 of 1980), women are entitled to receive their full income during a three-month maternity leave.<sup>56</sup> Mothers who return to work are given two breastfeeding breaks of at least half an hour per day until the child is 18 months old. Any employer with 50 or more female workers at one site must provide a nursery. However, childcare is still generally considered to be the domain of the family.

The state provides an allowance of three dinars (US\$2.46) a month to pregnant women from the third month of pregnancy until term, and a birth allowance of 100 dinars (US\$82) per baby. If women leave work to marry or have their first baby, they are rewarded with half a month's pay for every year they have worked, up to the fifth year of employment. For every additional year of employment, they receive a full month's salary. However, both of these rewards are conditional and require the recipient to leave the job within six months of getting married or three months of giving birth.<sup>57</sup>

Although no true civil society actors are working to improve women's economic rights in Libya, a number of state organizations, such as the General Union of Women's Associations, are dedicated to addressing women's employment needs.

### *Recommendations*

- ❖ The government should establish a nationwide program to encourage, train, and support women who wish to set up their own businesses. It should also encourage banks to provide preferential business loans for women.
- ❖ The government should introduce positive discrimination policies designed to promote qualified women in key areas, such as the university sector, to senior positions.

- ❖ The government should ensure that any administrative restructuring of the education system does not change the compulsory nature of school enrollment.
- ❖ The government should draft laws that protect women from sexual harassment in both public- and private-sector workplaces.
- ❖ To combat persistent negative stereotypes of women with respect to education and employment, the government should ensure that educational material and school textbooks present positive images of women as role models.
- ❖ The government should introduce women's studies or gender studies as a degree subject area in universities.

## POLITICAL RIGHTS AND CIVIC VOICE

Libya's "State of the Masses" is a unique political system that was devised by al-Qadhafi and laid out in the *Green Book*. It consists of a complex hierarchy of congresses and committees, through which every member of society is supposed to participate in the decision-making process. Every Libyan citizen is expected to attend Basic People's Congresses (local assemblies) at which state policies are discussed. The decisions of these bodies are then fed up to the General People's Congress (parliament), which is made up of the secretaries (heads) of the Basic People's Congresses, among others. The executive arm of the General People's Congress is the General People's Committee (cabinet), and every Basic People's Congress also has its own People's Committee. Leaders are chosen through the system of *tasayeed*, in which people must raise their hands publicly to vote for those offering themselves as candidates. In theory this system enables all citizens to engage directly in the country's political life. However, the Basic People's Congresses are dominated by regime loyalists and are largely irrelevant in practice, since core decision making generally occurs outside the formal mechanisms of government. As a result, participation in these congresses is low.

In the official discourse of the state, women are encouraged to attend and participate in the Basic People's Congresses, and there are no formal restrictions preventing them from serving in leadership positions. However, Libyan women have made few inroads into what is still essentially a male-dominated political system. Their political rights and civic voice remain

extremely limited on account of the nature of the regime and the fact that all political activity must be sanctioned by the authorities. Recent years have brought no real change in this respect, and women continue to play a marginal role in state institutions. For example, just 36 women gained seats in the 468-seat General People's Congress in the March 2009 indirect elections.<sup>58</sup>

Only a handful of women have secured positions in the executive structures of government. There are no women in the General People's Committee at present, and just three have ever been appointed to the body, serving as ministers of culture, media, and social affairs.<sup>59</sup> Between 1977 and 2006, only six women held positions in the Secretariat of the General People's Congress, and these posts were in women's affairs and social affairs.<sup>60</sup> One of these women, Huda Ben Amar, was appointed to the post of secretary for social affairs in March 2006.

Women are also largely absent from leadership positions in the *shabiya*, the country's intermediate administrative divisions. A woman was appointed as secretary of the People's Congress of the Benghazi shabiya in 2004, but she lost the position in April 2006.<sup>61</sup> Women remain underrepresented in the judiciary, with none serving on the Supreme Court (see "Nondiscrimination and Access to Justice"), and there are few female ambassadors. One of these is Najat al-Hajaji, Libya's envoy to the United Nations in Geneva. In August 2008, she was appointed to chair a series of United Nations antiracism conferences. For all its discourse on women's rights, the regime clearly remains extremely reluctant to appoint women to senior positions.

At the local level, women are ostensibly free to contribute to debates and discussions in the Basic People's Congresses alongside their male counterparts, but social norms encourage women to remain out of the public eye, and far fewer women than men participate in practice. Women are even less likely to participate in the Basic People's Congresses in rural areas, and in some cases those who do attend choose to do so indirectly on account of conservative social attitudes. For example, they might attend special segregated sessions in private girls' schools or other public buildings.<sup>62</sup> Furthermore, some women participate only because, on some occasions, attendance is mandatory. Women have assumed leadership positions in the secretariats of the Basic People's Congresses, but they have generally been restricted to the position of secretary for social affairs, which replaced

the post for women's affairs in the 1990s. Neither women nor men have the right to organize or participate in political parties, which are banned by the state.

The regime does not tolerate unauthorized peaceful assembly. Women, like men, are prohibited from engaging in any independent gatherings like strikes or demonstrations, which are banned under Law No. 45 of 1972. Freedom of expression is also limited, and anyone who airs critical views of al-Qadhafi, the government, or the Jamahiriya system risks arrest and mistreatment. There have been some improvements in this area since 2003, as the authorities have allowed a modicum of space for complaints—in the media or in some cases the courts—about issues like inefficiency, corruption, and the actions of the security forces. Consequently, women have a slightly greater degree of freedom in discussing women's rights and related issues like domestic violence, though it is clear that the state continues to dictate which topics are acceptable and which are forbidden.

Women have gained access to new sources of information in recent years, but the extent to which they can use this information to empower themselves in their civic and political lives remains limited by the general restrictions on independent political activity. It is still extremely difficult to purchase foreign newspapers or literature, and the local press is run by the state. However, a number of new newspapers and web-based publications have sprung up since 2003. Although established by al-Qadhafi's son, Saif al-Islam al-Qadhafi, these outlets are presented as independent media and are more informative than the traditional state media, which are little more than propaganda tools for the regime. Women increasingly use the Internet as a source of information, though satellite television, which is more accessible, is the most influential medium. Women are using online social-networking sites, and there is an increasing number of female Libyan bloggers, but these platforms have not been used as a means of connecting women's activists as such organizing would be deemed political and would not be tolerated.

### *Recommendations*

- ❖ The government should appoint female judges to the Supreme Court.
- ❖ The government should ensure that women are promoted to senior positions within the executive branch and key political institutions such as the General People's Congress and the General People's Committee.

These appointments should expand women's roles beyond the traditional spheres of social affairs, culture, and women's affairs.

- ❖ The government should permit genuinely independent civil society groups to lobby the authorities on political and civic matters affecting women, and to form partnerships with international women's organizations.
- ❖ The Education Secretariat should work to develop new textbooks that promote positive images of women as political activists and leaders.

## SOCIAL AND CULTURAL ATTITUDES

Despite state efforts to improve women's cultural and social rights, Libya remains a deeply conformist and traditional society that puts women at a distinct disadvantage. At the same time, social and cultural attitudes are being influenced by growing access to satellite television and the Internet, and by a partial opening in the domestic media, which has led to an increased awareness of women's issues and greater room for discussion. The expansion of mobile telephone access has also given women a greater degree of freedom, especially in dealings with the opposite sex.

Women have only a limited ability to make independent decisions related to their reproductive health, which is often considered a family affair. Contraceptives are available, but given the sensitivities surrounding sexuality, there is little information about birth control in the public domain; the same is true for information about sexually transmitted diseases, including HIV/AIDS. Under Article 18 of Law No. 17 of 1986, women must have permission from their husbands to obtain contraceptives, because they are only issued to a couple where there is mutual consent.<sup>63</sup> According to the most recent figures from the United Nations, in 1995, 45.1 percent of married women between the ages of 15 and 49 were using some form of contraception, although only 25.6 percent were using modern methods.<sup>64</sup> The overall fertility rate in Libya has declined from about 3.2 births per woman in 2000 to 2.7 in 2007.<sup>65</sup>

Abortion is a taboo subject in Libya, and the procedure is illegal unless it is necessary to preserve the mother's life. Under Article 390 of the penal code, whoever procures an abortion without the woman's consent faces up to three years in prison.<sup>66</sup> Under Articles 391 and 392, a woman who consents to or procures her own abortion, and anyone who procures an abortion with the woman's consent, is punished with a minimum sentence

of six months in prison. Article 394 stipulates that if an abortion is carried out for the preservation of the honor of the offender, for instance in cases of pregnancy out of wedlock, the penalty is reduced by half. Some illegal abortions are carried out in Libya, although if they can afford it, women sometimes travel to Tunisia, where the service is more readily available.

Health care is free to all citizens, and Libyan women have the same access to health services as men. However, the health system as a whole is inadequate, prompting those with means to travel abroad for treatment, usually to Tunisia or Europe. Some efforts to improve health care have been made recently, including upgrades to hospitals. But the future of the entire sector has been called into question by al-Qadhafi's March 2008 speech, in which he declared that health services, along with other state functions, should be handed over directly to the population. Female genital mutilation is not known to be practiced in Libya, although some assert that it occurs within rural communities of migrants from sub-Saharan Africa.<sup>67</sup>

Given the nature of the Libyan state, any activities related to community and social development are managed by the authorities. The ability of women to influence community life revolves primarily around their role within the family. Traditionally, older women tend to be given more respect and are consulted about decisions that affect the family, such as marriage and other domestic affairs.

The Libyan media are also controlled by the government, and even the more "independent" press is in the hands of al-Qadhafi's son, Saif al-Islam. These new outlets have opened up opportunities for women, and there now appear to be more female journalists than there were five years ago. Several of them work for the new publications, such as the *Corina* newspaper, and the government-appointed head of the Tripoli Journalists' Union is also a woman, Salma al-Sha'ab. Nevertheless, given the ongoing state control, women's presence in the media has not resulted in an improved ability to influence content or portrayals of gender issues. The state media frequently promote the idea of women's rights and of their playing an active role in society, but this is largely propaganda designed to laud the achievements of the revolution.

Women are adversely affected by poverty due to their gender because the job types to which they are limited by tradition often fail to provide enough income for financial independence. Divorced and widowed women are particularly vulnerable to poverty as a result. Under the social security law, widows are entitled to welfare payments in the form of a

percentage of their deceased husband's pension. However, in practice, due to bureaucratic inefficiencies, these payments appear to be difficult for women to collect.

Women who are divorced face particularly acute challenges. Although Libyan law calls for the man to leave the marital home to his wife and children upon divorce, tradition dictates otherwise. In reality, divorced women are expected to return to live with their families, as society does not tolerate the idea of a woman living alone and supporting herself.<sup>68</sup> Unmarried women are similarly expected to remain in the family home until marriage.

### *Recommendations*

- ❖ The government should sponsor nationwide public information campaigns about reproductive health and modern methods of contraception.
- ❖ The government should run similar campaigns to raise awareness of HIV/AIDS and other sexually transmitted diseases.
- ❖ The government should introduce special shelters and support networks to provide temporary or group housing, as well as job training and other services, for divorced women or widows who have no family to support them.

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- <sup>63</sup> The law is available in Arabic on the justice ministry website, <http://www.aladel.gov.ly/main/modules/sections/item.php?itemid=64>.
- <sup>64</sup> UN Population Division, *World Contraceptive Use 2007* (New York: UN Department of Economic and Social Affairs, 2007), [http://www.un.org/esa/population/publications/contraceptive2007/contraceptive\\_2007\\_table.pdf](http://www.un.org/esa/population/publications/contraceptive2007/contraceptive_2007_table.pdf).

- <sup>65</sup> World Bank, "GenderStats—Health," <http://go.worldbank.org/UJ0Q1KQKX0>.
- <sup>66</sup> The relevant excerpts from the penal code can be found in the *Annual Review of Population Law* database, hosted by Harvard University's School of Public Health, at <http://www.hsph.harvard.edu/population/abortion/Libya.abo.htm>.
- <sup>67</sup> Bureau of Democracy, Human Rights, and Labor, "Libya," in *2008 Country Reports on Human Rights Practices* (Washington, DC: U.S. Department of State, 2009), <http://www.state.gov/g/drl/rls/hrrpt/2008/nea/119121.htm>.
- <sup>68</sup> Mustafa Attir, *Al-Mara'a fi al-Jamahiriyat*.