

Defender Center for Human Rights

### Research Studies on Marginalized Groups in Libya

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#### Introduction

Nearly a decade after the February 17, 2011 revolution, Libya has so far failed to achieve democratic transformation andjustice, and promote human rights and equality amongst its citizens. This is not a strange path for many revolutions, especially those marked by violence. In recent years, civil conflict and the absence of consensus between two governments, one in the east and one in the west of the country, have threatened to divide the country which has become a site of armed conflicts whose end is hardly on the horizon. In light of the collapse of the justice system in Libya, human rights violations in the country have escalated in an unprecedented manner, and impunity has become as rampant as an epidemic. This encouraged the armed groups, which were spawned after the revolution, to commit more serious violations without deterrence. Moreover, the international community has failed to end the conflict and hold those responsible for the violations to account. As Libyans languish under confrontation between people and countries with opposing interests, proxy wars and the exacerbation of the cycle of violence, they look forward to the day when their country will enjoy justice and peace.

In this thorny context, addressing the human rights situation in Libya becomes a matter of concern. In addition to raising many challenges related to ways to address violations, the deteriorating human rights situation has led to an increase in the suffering of many communities and groups from inequality, deepening social injustice, discrimination and ill-treatment, and reducing victims' ability to access justice mechanisms. This, in turn, exacerbated the curtailment of human rights. This weakens the chances of stability and threatens to escalate tensions in Libyan society, which has been suffering from an unresolved civil conflict for years.

In this context, Defender Center for Human Rights decided to start its research productionconcerned with analysing and promoting the human rights situation in Libya by issuing the book that is in your hands now; which includes research papers that discuss the challenges facing some marginalized groups in Libya (namely people with disabilities, women and children). The book aims to analyse the legislative and legal problems

and challenges that these groups face, and to strengthen their protection mechanisms, with a focus on analysing and reviewing legislative texts in comparison with international standards, and to suggest practical recommendations through which they can improve the legislative and societal environment in order to promote human rights.

The Defender Center for Human Rights considers the human rights-based approach as one of the main pillars of promoting the principle of "no one will be left behind" on which the 2030 Agenda for Sustainable Development, issued by the United Nations General Assembly more than five years ago<sup>(1)</sup>, is based. The necessary tools to address the growing inequality in the world despite the challenges. (2) The Committee on Economic, Social and Cultural Rights issued a statement containing its vision on the relationship of the International Covenant on Economic, Social and Cultural Rights and the 2030<sup>(3)</sup> Agenda for Sustainable Development. While the committee considered that the plan represents a strong expression of the essence of the covenant, it emphasized the need to give priority to disadvantaged and marginalized individuals and groups. The disadvantaged and vulnerable who are exposed to general and multifaceted forms of discrimination referred to by the committee in this context include persons with disabilities, women and children - the categories that this book focuses on in the Libyan context.

In 2018, the United Nations Development Program (UNDP) developed a program that seeks to achieve the plan, identifying five elements that lead to exclusion: "discrimination, geography, governance, socioeconomicstatus, and shocks such as wars and conflicts" (4). About 4 years

<sup>1</sup> General Assembly Resolution on September 25, 2015 (Transforming our world: the 2030 Agenda for Sustainable Development), Document No. (A / RES / 70/1)

<sup>2</sup> Samuel Moyn, Human Rights Are Not Enough, the Nation, 16 March 2018.

https://www.thenation.com/article/archive/human-rights-are-not-enough/

<sup>3</sup> Statement by the Committee on Economic, Social and Cultural Rights, Pledge to leave no one behind: The International Covenant on Economic, Social and Cultural Rights and the 2030 Agenda for Sustainable Development, April 5, 2019, document number (E / C.12 / 2019/1).

<sup>4</sup> Leaving No One Behind: Inclusion of Marginalized Groups in Some Arab Countries, Third Social Development Report, ESCWA, United Nations, 2019.

after announcing the ambitious 2030 plan, the Arab Forum for Sustainable Development in 2019 recognized that "the progress made in the Arab region as well as in the world is far from hopes and aspirations, where poverty, hunger and inequality rise, conflicts and wars proliferate [...] the global political polarization impede on the ability of collective and teamwork." (5) Without controversy, Libya is one of the most notable Arab countries to which this description applies.

Inits statement regarding the first voluntary review report on the sustainable development goals<sup>(6)</sup>, the Ministry of Planning of the Government of National Accord did not deny the existence of many challenges facing the achievement of the Sustainable Development Goals, but it failed to announce a concrete plan of action to address those challenges, and was satisfied with its narrative that claims that there is a positive relationship between state institutions and civil society organizations, as well as its emphasis on interest in broad community participation and the encouragement of youth and women. This is a model for the discourse of authoritarian regimes when they deal with international bodies, The Libyan government has ignored the fact that the civil society is suffering under the oppression of various authorities, in the east and west of the country, and human rights defenders suffer from various legislative and security restrictions that amount to fear for their life and physical safety. (7) This makes talking about a partnership with civil society completely remote from reality. It goes without saying that it is not possible to talk about opportunities to improve the conditions of marginalized groups, if the voices defending them are also subjected to unrelenting systematic suppression.

The irony goes further when the authoritarian regime speaks of its wonderful relationship with the youth and women. Last summer, young people, amongst other groups of citizens came out in peaceful popular protests in many Libyan cities calling for improving living conditions,

<sup>5</sup> Arab Forum for Sustainable Development Report 2019, 30 April 2019, Public Messages: Paragraph 4, Document No. (E / HLPF / 2019/3 / Add.3).

<sup>6</sup> https://sustainabledevelopment.un.org/memberstates/libya (in Arabic)

<sup>7</sup> for more details; Please view the Defender Center's first annual report on the situation of human rights defenders in Libya for the year 2019 at the following link:https://cutt.ly/5hGEdfI (in Arabic)

providing basic services, eliminating corruption and protecting the right to expression. The authorities did not receive these legitimate demands with roses and respect for citizens' rights, but simply confronted peaceful demonstrators with the use of excessive force, striking at the expense of their obligations under international human rights law.<sup>(8)</sup>

Despite the effective participation of Libyan women in the revolution that toppled the Gaddafi regime, they still face abuse from the society imbued with a culture that violates womens' right to equality and degrades them because of inherited social and religious traditions. In the aftermath of the revolution, Libyan women were seeking to extract their rights to political participation; while they are still captive of the struggle for other basic rights such as free movement, travel, work, and more, in a societal context dominated by strict religious fatwas, whose owners take a hostile stance on equality between women and men. Moreover, Libyan human rights organizations confirm the existence of a disturbing pattern that has unfurled in recent years in Libya, wherein some prominent activists who have taken critical positions against the authorities and their militias have been subjected to violent attacks - as we witnessed in the assassination of lawyer and human rights activist Salwa Bugaighis, in addition to the kidnapping of Siham Sergewa, a human rights activist and a member of Parliament. (9) While the Constituent Assembly witnessed controversy regarding women's rights during the preparation of the draft constitution, the existing legal environment does not provide guarantees that protect the rights of women. Rather, they suffer from discrimination and erosion of their rights to equality as highlighted in Zahara' Langhi's paper presented here: Abuse of women's rights in Libya: trends, patterns and relevant legislations and policies.

<sup>8</sup> Defender Center for Human Rights condemns the suppression of peaceful demonstrations in several cities and demands respect for freedom of expression, the right to peaceful protest and the prevention of enforced disappearance (position paper), September 9, 2020, https://www.defendercenter.org/ar/4868. (in Arabic)

<sup>9</sup> Defender Center and 4 human rights organizations: Libya must end the systematic policy of impunity and investigate the killing of lawyer and political activist Hanan Al-Barasi, November 11, 2020, https://www.defendercenter.org/ar/5027. (in Arabic)

When examining the conditions of persons with disabilities in Libya, we find that their numbers are increasing at a high rate as a result of armed confrontations and hostilities that have taken place in the country in recent years. Persons with disabilities in Libya face many challenges such as obtaining the right to education, vocational training, provision of health care and access to equal employment opportunities.<sup>(10)</sup> The lack of transparency and the increasing obstacles facing the realization of the right to access information have also made it extremely difficult to find recent and reliable data on the number of persons with disabilities in Libya. This is discussed in the paper by Jazia Gebril on Legal Protection of Persons with Disabilities between National and International Efforts.

Regarding the research paper on the rights of the child in Libya by Ragab Saad - Crisis of Children's Rights in Libya: a Legislative Chaos and Unchecked Gross Violations - it suggests a full-blown tragedy for children. The suffering of children who need support, healthcare and the provision of clean drinking water continues, while the continuing armed conflict leads to successive waves of internal displacement of civilians, in addition to the occurrence of a large number of deaths and injuries, including children. Some children suffer from deprivation of nationality for various reasons, while others are subjected to grave violations without accountability because they are migrant or refugee children. Despite Libya's signature of the Convention on the Rights of the Child, and several other agreements and covenants related to respecting, protecting and fulfilling the rights of the child; we find that the Libyan legislative system still suffers from serious gaps in terms of providing the necessary guarantees for the protection of children's rights and compliance with international obligations in this regard.

The Defender Center for Human Rights looks forward to the contribution of such studies to improving the conditions of marginalized groups in Libya. The Center calls on various Libyan authorities to take the necessary legislative and executive measures to protect persons with disabilities, women and children, and other disadvantaged and marginalized groups

<sup>10</sup> Statement from Libyan human rights organizations on the situation of persons with disabilities in Libya, December 3, 2020, https://www.defendercenter.org/ar/5127. (in Arabic)

in Libya, and to benefit from the recommendations provided in the book. While realizing the magnitude of the difficulties and challenges facing the promotion of the rights of marginalized groups in Libya, in light of the current context, the Center believes that the availability of political will is capable of promoting and protecting human and citizens' rights. Finally, this book is the result of a joint effort between the Defender Center for Human Rights' management, the participating researchers and others.

In conclusion, certainly, the book does not cover all marginalized groups that deserve care and attention, such as immigrants, asylum seekers, minorities, and others. Rather, it is the Center's initial attempt to highlight the suffering of some of the groups that do not fully enjoy their rights and constitute the start of the research efforts of the Center in the field of promoting and investigating human rights.

#### The Defender Center for Human Rights

Paris, 10/12/2020



Imad Arqaia

# Abuse of Women's Rights in Libya: Trends, Patterns, and Relevant Legislations & Policies

#### Zahara' Langhi

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#### Introduction

Since the end of the dictatorship in Libya, after waves of popular uprisings and foreign intervention, and the start of the transitional period, there was an increasing interest in the issue of abuse of women's rights and the development of relevant legislations. This was particularly significant as the politics of gender or as referred to as 'gender paradox'<sup>(1)</sup> gained increased attention in the country.

During the transitional period a new constitutional and legislative phase was launched in the country. Women were at the front of political movements and demonstrations. They contributed significantly to the medical and humanitarian relief efforts. Libyan women abroad backed the anti-Gaddafi campaign in several ways including financial and moral support. Indeed, Libyans in many countries organized different activities to support the revolution. During this time women's demands were focused on the need for peaceful transfer of power and inclusivity. Libyans aspired to resume a faultless constitutional life and contractual agreement on the political system. They were looking for a legislative life based on the contribution of all members of the society in issuing laws and regulations, and protecting civil, political, economic, social and cultural rights for all individuals and groups. However, despite the abundance of opportunities for protecting women's rights and the increase of their involvement in the new system, they were exposed to a wave of orchestrated, opportunistic moral and actual violence.

I report in this article some of the patterns and directions of a sample of abuse of women's rights during the transitional period. I also report on the patterns and directions of relevant legislations. In this context legislation direction means the direction of the laws concerning the current situation of women. Direction in this context does not necessarily carry an evolving

<sup>1</sup> Zahra' Langhi (2014) Gender and state-building in Libya: towards a politics of inclusion, The Journal of North African Studies, p. 1, 2014, 19:2, 200 210, DOI: 10.1080/13629387.2014.881736 This term was coined to express the contradiction that while women contributed to the Libyan revolution in 2011 their rights were abused.

connotation, on the contrary, it sometimes means fluctuation or decline. This article focuses on the most significant gaps in the relevant legislations and scrutinises the constituency between legislations and their application.

#### Methodological approach

A holistic methodological approach was applied by examining abuse of women's human rights in Libya and the direction of relevant legislations from a legal, social, economic, political and even historical perspective. The legislative reality in any country is affected by and should respond to the juristic, political, social and economic situation of the time. It is also required to examine and evaluate the legislative situation and improve it according to the existing circumstances and make sure it meets the essential needs of the society. Any existing legislations are affected by the legal, political, social and economic reality of the preceding era. Therefore, this article is highlighting the legislations and procedures that should ensure the protection of women. It is also highlighting the relationship between abuse and legislations' direction on one hand and the legal, political, social and economic contexts on the other hand.

This article is based on a number of communications and interviews as well as focus group sessions with active members of the society in several Libyan cities. This included contacting and in-depth interviews with leaders of women's groups and human rights activists and female political detainees during Gaddafi's time in power.

In addition, this paper benefited from the author's series of personal involvements that were targeted to improve and reshape the constitutional and socio-political reality in the country. The author had special interest in the women's issues during the transitional period. Some of these initiatives have been associated with contributing to comprehensive national reviews, such as the Libyan National Report twenty-five years after the Beijing Platform and Declaration 25+<sup>(2)</sup>. Within this framework, the author

<sup>2</sup> The author of the present paper contributed to the preparation of the Libyan national report for the five-year review of the Beijing Declaration and Platform for Action 2020 (issued in 2019) and contributed to its writing. The five-year review is a multi-faceted evaluation process for the imple-

conducted interviews with a number of high-level officials in a number of official institutions including the Ministry of Labour and Vocational Training, the Department of Planning and Strategies at the Ministry of Education, and the Women Empowerment Unit in the Government of National Accord.

#### The significance of the topic

The importance of analysing the issue of the movement of legislations affecting the life of women and the means of reforming them, including labour legislation, is based on several considerations, foremost among them is that women are the most suffering party during the transitional period and the armed conflict that followed this stage of the Libyan political power struggle. This was confirmed in the Women, Security and Peace agenda embodied in Security Council Resolution 1325/2001 and other associated resolutions during the last two decades. There is enough evidence for that.

mentation of the Beijing Declaration and Platform for Action and aims to identify the achievements made during the past five years since 2014. In addition to exploring the challenges and obstacles that countries faced in implementing these commitments, as well as preparing for the future in the short term (during the next five years). The reviews also focus on the importance of cooperation between official institutions and community forces, especially civil society organizations. The Platform for Action identifies measures for national and international action in areas of critical concern for the advancement of women in twelve dimensions: the burden of increasing poverty on women; Education and training of women; violence against Woman; Women and armed conflict; Women and the economy; Women in positions of power and decision-making; Women and the economy; Institutional mechanisms for the advancement of women; Human rights of women; Women and the media; Women and the environment, childhood. Since the Beijing Declaration and Platform for Action was issued, it has been decided to conduct five-year reviews. In 2020, the world will celebrate the twenty-fifth anniversary of the Fourth World Conference on Women, the adoption of the Beijing Declaration and Platform for Action (1995), and the completion of the fifth revision.

<sup>3</sup> Emily Burchfield (2019).

<sup>4</sup> The UN envoy, Ghassan Salame, said in a statement on the occasion of the "International Day for the Elimination of Violence against Women", at the end of 2017: "At least 31 women were killed and 41 others injured, during the hostilities in Libya this year." Adding: "Violence and insecurity, for many years, have been, and continue to be, more harming to women and girls and imposes severe restrictions on their freedom of movement, their ability to participate in the public sphere, and their ability to seek redress for violations". https://cutt.ly/ahGRwYe (in Arabic).

For example, the transitional and armed conflict periods are characterized by insecurity and deteriorating protection of women. There was a high proportion of incidents in which different parties in the conflict as well as criminals deliberately targeted women. This is because they are less able to protect themselves.

The targeting of women's rights and security is widely used for political purposes. On the economic level, most countries in the region are characterized during periods of stability, with high proportions of women and girls who do not have decent work that generates enough income. This is due to structural reasons and inherited social perceptions about women's work. During times of conflict, economic conditions deteriorate, and consequently the number of women without income increases. As a result of the deteriorating security conditions, the number of women losing their jobs are much higher than that of men.

Reforming the legislative movement affecting the situation of women is a partial achievement of justice for women. In addition, during the transitional period, waves of ideological extremism struck the country, which negatively affected the culture of law in the country, especially at the level of legislation movement affecting the life of women. For example, extremist frameworks have made efforts to popularize perceptions that combat women's existential independence on the social and cultural levels, such as their right to move and travel alone, and these extremists ideologies contest women's rights of work outside the home and object to the assignment of high institutional positions to women by imposing a religious paradigms to restrict women's rights. At the same time, these ideologies tried to push for the legalization of these blurry social perceptions.

In a word, placing the women's legislation movement under the microscope, and upgrading these legislations is an integral part of a radical legislative reform movement that is hoped to bridge gaps that have emerged over a long period. It also contributes to the safe passage towards the stage of stability and restoration of a well-established constitutional life and a vital legislative movement that meets the needs of society.

#### The paper framework

This paper is divided into three sections. The first section includes a historical background for the movement of legislation affecting women in Libya. The second section includes an analytical review of patterns and trends of violations during the transitional period (2011-2020). The third section deals with future prospects and lists the most significant recommendations which I believe could reform the legislation movement affecting the current situation of women.

# Part One: Historical Background of the Movement of Legislation affecting Women in Libya

### A- Features of social norms and legislation movement before the establishment of the independent state in 1951

Before the declaration of independence in 1951, life in Libya was organized according to a set of social customs and norms and official laws that contributed to enhancing the participation of women in the political and economic fields and settling disputes amicably. The impact of the social norms on the life of Libya was more significant than the influence of official legislations<sup>(5)</sup>. Social rules and formal legislation recognized the participation of women in managing the life of local communities. The contribution of women leaders in providing advice to the heads of local communities among the tribes and in the urban areas was recognized. The contribution of women in raising complaints of families and representing them was also accepted. Women could submit proposals related to the conduct of the affairs of the whole community, and participate in settling and resolving civil, social and economic disputes in amicable ways at the tribe level and between different tribes.<sup>(6)</sup>

<sup>5</sup> For further reading see: Najla, Elmangoush (2015). Customary Practice and Restorative Justice in Libya: A Hybrid Approach.

<sup>6</sup> Zahra' Langhi (2018). Charting the way forward for local women mediators in Libya.

The system of social norms and legislations also recognized the contribution of women to economic activity at the family level and at the community level, as women practiced the bulk of their public, political and economic activities within the framework of the local community, especially through natural social units, including their nuclear families, extended families and clans of the tribes. Women participated with men in managing public affairs, settling disputes, and in economic production. On the economic level, women have mastered traditional handicrafts, agriculture and textiles. Women have also participated in financial planning, budgeting, spending, determining reserves, and running macroeconomic activity at the level of the private sphere and society. Specifically, during the nineteenth century, Libyan women in Cyrenaica participated in leading the administration of the trans-tribal society led by the Senussians, in addition to their participation in spreading the Senussi message (Da'waa) itself. Each

During these eras, social norms and legislations assigned to natural social units and other social formations and institutions most of the social protection services, support and assistance provided to women, in addition to requiring official bodies to bear a degree of responsibility in relation to the provision of these services. Norms and legislation impose an explicit commitment on the shoulders of natural social formations, for example, extended families, tribes, and other social institutions such as crafts sheikhdoms, neighbourhood sheikhs, mosques, Sufi circles and orders, and affluent families, to provide support services to women in need. This included providing these services to women who are exposed to extreme poverty or destitution due to illness or loss of the main breadwinner (husband, brother or father) or due to old age, or having to provide for the family on their own. Some women were also receiving irregular circumstantial support from the official authorities.

<sup>7</sup> Bugaigis and Tantoush, p. 8,9, 2017.

<sup>8</sup> Mona, Fikry (1978). An Oil Boom, Women, and Changing Traditions: A Study of Libyan Women in Benghazi.

The scope of community support was much larger than the scope of formal support. The forms of support included providing necessities and cash aid. Subsidies included providing basic crops and grains, regular meals, and production tools necessary for practicing professional economic activities such as small and micro enterprises. Sometimes the support represented in the training of needy girls and women, building their vocational and professional capacities, and their enrolment in an already existing economic activity in order to obtain an income. The scope of inkind subsidies was much greater than cash benefits. In short, the majority of women's participation in economic life was concentrated in the informal economic setting (akin to what we call now "the private sector").

During these eras, there were a set of values that could be described as governing values. These values facilitate understanding the work value as not only to offer much needed income, but work was also viewed as having the value of cooperation, the return of the earnings to all members of the social unit, and the clarity of the link between the idea of work and the idea of faith.

During the modernization phase, the challenges related to a voluntary and compulsory introduction of different lifestyles, and imported technologies led to severe structural changes in the socio-economic structure, such as the decline of women's economic participation, the deterioration of the informal economic framework, and the decline in the application of social norms and legislation used to govern that participation. Part of the modernization was forced and some of it was voluntary. As individualism spread in the economic sphere, collectivism shrank, and new contexts for labour concepts emerged. The natural social formations and other social institutions, such as the tribe, the extended family, and the local community based on a tribal alliance have been subjected to disintegration and fragmentation. Many of these natural social formations and the structures on which they are based on have lost the ability to serve as a base or platform for micro-economic activities, or to provide security, support and social protection services for women.

During half a century, Libya was subjected to several colonial attacks, beginning in 1911 with the Italian invasion that ended in its departure as a result of defeat in World War II at the hands of the Allies. During the period from 1944 to 1951, Britain placed the Cyrenaica region under its military administration, while France occupied the Fezzan region. The colonial period witnessed the disruption of the legislative institution to impose occupation laws and seizure of local resources and the economic stock. The occupation committed crimes and violations against the Libyans, as the Italian occupiers destroyed a large number of Sanusi and other religious places that were traditional centres for local knowledge, which led to a sharp decline in education. In addition, the occupation has established concentrations camps in which tens of thousands of Libyans have their freedom restricted. In addition to the practices of forced transfer associated with the dismantling of natural social formations, individual and mass executions, genocide, and the imposition of forced labour. The total number of people killed as a result of the genocide is, according to estimates, approximately 800,000 Libyans. The participation of women in economic life has declined sharply, which has led to an increase in poverty to unprecedented rates. Despite the creation of new economic and social institutions such as associations and some unions, they did not provide adequate services for women and were inaccessible.

# B- Features of the legislative movement in general and legislations affecting women during the period of the independent state and the constitutional monarchy (1951-1969)

In the fifties and sixties of the last century, within the context of being within the framework of the modern nation-state and under a constitutional monarchy, and in light of the decline of social norms the official authorities moved towards protecting rights, including women's rights, and formal legislative movement was launched with the aim to empower the nation and women. The movement of legislation and related policies aimed at raising the standard of living in society and among women after Libya had reached a level of poverty that made it, according to some classifications, the

poorest country in the world. (9) Official authorities issued a package of laws and sought the help of prominent Arab jurists, such as Al-Sanhuri. The new legislations included the civil law as well as the education law, according to which education became compulsory for girls. In general, education, in its modern form, has become the basis for employment in the public sector, and the package also includes labour law. Libya joined the International labour Organization in 1952. (10)

The concept of the public sector and the private sector has emerged to reflect the modern conceptual division of economic activity. The labour Law stipulates equal pay for men and women and has led to the integration of women into the workforce. The status of women has seen remarkable progress in the nascent (modern sense) labour market. As a result of this legislative movement and the empowerment approach that was behind it, the rate of school and university attendance of girls, young and old, increased. In some sectors, such as education and health, the rate of hiring women has increased significantly. Official authorities (The State) have used labour legislation and approaches to appoint women in the public sector as a means of empowering the entire Libyan nation, empowering women, and firmly linking society to The State.

These legislations were also used to fill some of the wide void resulting from the deterioration of the inherited informal economic framework and the weakness of the traditional nascent private sector. Libyan women have entered various state institutions, in various sectors, such as education, media, health and culture, and the presence of some pioneering women who have made achievements in various fields has increased. Official authorities used education and culture to protect rights. The package of new laws also included the Health Law. In general, legislation issued by the constitutional monarchy is characterized by the provision of material privileges to women that fall within the framework of positive discrimination. For example, the principle of equality between women and men has been adopted in the matter of conferring their nationality on children.

<sup>9</sup> Nour al-Din al-Thalathi. Omar Al-Mukhtar Association: Derna Center Documents. Elite House for Printing and Publishing, (2016)

<sup>10</sup> See: Zuzik, M. Benedict. (1966). Labor law and practice in the Kingdom of Libya.p.25.

This period also witnessed an energetic movement in the trade unions and federations and the Scout Movement, which was founded in 1954 and then became a member of the Scout Movements in the Maghreb, and the Women's Renaissance Society, which was founded by the pioneer of the women's movement in Libya, Mrs. Hamida Al-Enezi (1892-1982). The establishment of the association represents an extension of Mrs. Al-Enezi's initiatives in education, sponsorship and education of orphans, which she launched upon her return from Istanbul during the second decade of the twentieth century. This period also witnessed the establishment of the Red Crescent Society in 1957, which gained recognition by the International Committee of the Red Cross in 1958, the Association of the Blind, which was established in 1961, the Al-Nour Association for the Blind, which was established in 1962, and the establishment of new sports clubs such as the Hilal (Crescent) Club in 1950. In addition to the establishment of the National Libyan Theatre in 1966. This period also witnessed the establishment of a number of cultural forums that contributed to enriching cultural life and in organizing lectures, seminars and exhibitions, such as the Thought Society, which was established in 1962. (11)

Libyan women have also joined the government administration. During the period of building the Independent State, Hamida Al-Enezi's initiatives were renewed. And in 1963 she led feminist demonstrations to recognize the right of Libyan women to vote. These efforts paid off. It has also taken a series of symbolic steps that consolidate the foundations of the right of women to participate in the public sphere. In 1964, Al-Enezi and several other women representing the Libyan elite attended the opening session of Parliament. In the following year, she was able to persuade the king to invite the leaders of the Libyan women's movement to attend the army parade on Independence Day and sit on the podium of honour, and the king welcomed and awarded her the Mohammed bin Ali al-Senussi medal, which is the highest honour in the country. In fact, this honour is a tribute to all Libyan women represented by Hamida Al-Enezi, not a personal tribute to her. When King Saud bin Abdulaziz visited Libya in 1957, King

<sup>11</sup> Zahara' Langhi (2020) The Battle to Restore Institutionalization in Libya. A chapter in a democracy that has lost its way. Cairo Center for Human Rights.p.10.

Idris chose to include in the hospitality schedule a visit to a girls' education school, in addition to the parliament and Omar al-Mukhtar's brigade in the Libyan army. Queen Fatima also directly and symbolically supported the feminist contributions in the public sphere, including that she was the honorary president of the Women's Renaissance Association. (12)

From an early stage, the planning and policy movement affecting the situation of women tended towards implementing the principle of the obligation to seek external assistance. This was evident in relation to the protection of the right to health and the right to clean water and sanitation, which were then among the most important economic and social rights for the society and women in light of the systematic violations the Society has been subjected to over half a century. At the moment of achieving independence after many violations committed by the Italian occupation which include genocide and impoverishment, and as a result of the transformation of part of the land of Libya into a battlefield in World War II, Libya, like many countries in the world at that stage, was facing great difficulty in implementing the obligations that guarantee the protection of economic and social rights. This would be possible without obtaining foreign aid, as determined by the relevant literature. (13) Therefore, the International Covenant on Economic, Social and Cultural Rights obligated signatory countries to request and accept assistance and to provide it to countries in need. This meaning was applied by the official authorities from an early age. In his 1966 book labour law and practice in the Kingdom of Libya Zuzik, M. Benedict says:

"Libya has received technical assistance in health matters from the United Nations and its specialized agencies as well as from a number of member UN countries, including the United Arab Republic, France, Italy, Pakistan, Turkey, the United Kingdom, and the United States; much of this takes the form of assigning technical experts to Libya in the field of health education. World Health Organization (WHO) maintains a permanent mission in Libya, whose program is mainly concentrated on public health training,

<sup>12</sup> Zahara' Langhi, "My Inspiration": A Feminist Campaign in Libya to Rediscover the Roots. March 2018.

<sup>13</sup> See: Economic and social rights. Handbook of National Human Rights Institutions. P 17

tuberculosis control, nurse education, and medical and child health. The United Nations International Children's Emergency Fund (UNICEF) has cooperated in a number of WHO projects by providing equipment and supplies. WHO established a school of nursing in Tripoli in 1955, another in Cyrenaica in 1963, and an institute for medical assistants and sanitarians in Benghazi in 1957"<sup>(14)</sup>

The official authorities have given priority to women in training and appointment in the nursing profession. With the passage of time, especially with the increase in resources, there have been integrated policies for overseas scholarships. Official authorities sent students to study medicine, and doctors were also brought in from abroad to provide technical knowledge.

The movement of legislation affecting women has also tended towards implementing the principle of "states' obligation to ensure the progressive actual enjoyment of these rights." This is what is expressed by the outcome of the planning process and the five-year plans that were carried out at that foundational stage. (15) The authority did not wait until a certain level of development was achieved to begin providing what is needed to protect rights through legislation and policies.

Furthermore, the legislative movement affecting women has tended towards implementing the principle of "using the maximum of available resources." When the country was mired in extreme poverty, the official authorities sought to achieve what could be achieved in terms of taking the necessary measures to protect rights, especially through legislation for rights, most of which came in the civil law. Upon discovering oil, the circle of legislation and policies that contribute to protecting rights expanded, and the official authorities allocated a larger budget for this. Society and women have increased their rights.

<sup>14</sup> p15 of author's explanation

<sup>15</sup> Ali Ahmed Ateeqa. Between will and hope. Memories and experiences of my life. Jordanian Ward House for Publishing and Distribution.

The movement of legislation affecting women has also moved towards implementing the principle of fulfilling minimum basic levels of rights. Accurate information and complete data are not available to allow an assessment of whether the totality of measures taken by the official authorities to protect rights during the first five years resulted in the full fulfilment of this principle. But it can be said that it was going in the direction.

However, the problem of the decline of the inherited informal economic framework and the nascent private sector has not been resolved. The formal authority ("the State") has become almost the primary employer of the overwhelming majority of citizens. In other words, at this stage the Rentier State arose. No legislations were issued that contribute to developing the inherited informal economic framework or making the new private sector a true partner. Likewise, no legislation has been enacted to stimulate women's participation in the nascent private sector commensurate with their participation in the public sector. Due to the low participation of women in the private sector, the support provided by the private sector did not reach them.

With the discovery of oil, Libya suddenly became a country with a very high national income after it was one of the poorest countries in the world, and this was coupled with the growth of the rentier mentality that rivalled the productivity mentality. The constitutional monarchy system gave priority to building capacity, enhancing skills, transferring technical knowledge, and diversifying the economy. Within years, the cities of Libya became a centre of cultural and scientific radiation in the Arab region. Oil became the only source of GDP. Rentierism began to creep into Libya. A rentier country is a country that derives all of its national revenue, or a large part of it, from leasing its resources to external parties, and in which the authority relies on distributing part of the rent revenue to citizens in building its legitimacy and gaining support. One of the characteristics of rentier countries is the low performance of the productive economic sectors, the control of a small number of state revenues and the exclusion of society from the decision-making process related to resource management mechanisms. (16) A citizen

<sup>16</sup> Akl, 2016. p.3.

with a rentier mindset imagines that just because he is a citizen of a resourcerich country is entitled to a share of the revenue from the resource rental regardless of his contribution to the nation's economic life. In Libya, as in the oil-rich countries, some powers assumed that they were entitled to an income, given their socio-political weight. Some government measures and policies to reconcile the tribal demands with the demands of the new elite had the unintended consequence of strengthening the rentier mentality. The decline of the inherited informal economic framework and the weakness of the nascent modern private sector have increased the rentier mentality.

#### C- Characteristics of The Legislative Movement and Legislation Affecting Women During the Phase of Suspending the Constitutional Life and The Authoritarian Regime of Colonel Gaddafi 1969-2011

After the military coup in 1969, the new official authorities began to establish an autocracy based on coercion and the weakening of society by violating rights at the individual and collective levels, and by systematically impoverishing it. Gaddafi disrupted the constitutional life based on consensual contracting. Embodying the "big brother" character of George Orwell. Gaddafi as the President of the Revolutionary Council sought to win the support of the younger generation of females and males to weaken the founding legitimacy of the constitutional monarchy. Gaddafi froze the 1951 constitution and then terminated it.

Gaddafi formulated a revolutionary ideology consisting of a mixture of Maoist socialism and anarchism, then imposed the Green Book he had written in the context of the reproduction of the Red Book by Mao Zedong. Gaddafi then inaugurated the trend of 'revolutionary encroachment', the purpose of which was to reformulate the entire Libyan political scene in a manner close to the Cultural Revolution launched by Mao to reformulate the Chinese political society, and end the spectrum of free and various personal convictions adopted by Libyans and forcing them to adopt his personal convictions.

## 1- Patterns and trends of violations related to macroeconomic policy, and patterns and trends of legislative imbalance

Official authorities have adopted an economic approach based on systemic corruption and impoverishment of society within the context of a political and economic legislative vacuum that allows this. Where public life lacked legislation and measures to ensure the existence of mutual checks and balances between the three authorities (the legislative, executive and judicial branches). The legislative authority has refrained from issuing laws ensuring that the head of the executive authority and its financial responsibility are subject to monitoring and accountability, which enabled the head of the regime to seize the largest part of the gross domestic product represented in the oil revenues and prevent society from benefiting from the returns on its investment. In partial justification for this, Gaddafi used the excuse that oil revenues withheld from society were intended for future generations. Gaddafi's autocracy also refrained from investing a minimum amount of GDP in development of the country. At the same time, he pursued a policy of systematic impoverishment by manipulating the exchange value of money. Likewise, the private sector was halted, as the state marginalizes the role of the private sector in economic activity and issued rules that prohibit the establishment of Libyan private sector companies. (17)

Gaddafi's regime made practicing private business subject to submission to its hegemony, in order to prevent the emergence of a wealthy class capable of freely making its choices and decisions. For more than four decades, there has been a systematic effort to instil a certain conviction in the collective consciousness that one's earnings and achievement are not related to work or productivity, but rather to subjective factors such as coincidence, proximity to the ruling elite and loyalty. Gaddafi re-practiced rentier mentality and over 40 years he has defined citizenship in Libya as receiving benefits from the state in exchange for loyalty and obedience. This conviction has

<sup>17</sup> Abuhadra and Ajaali. 2014. p. 13.

<sup>18</sup> Akl, 2016. p.2.

found its way into a large segment of society. The Confiscation Law No. 4 of 1978 was the most important embodiment of the despotic approach and led to the components of society into conflict with each other. This law contributed to "destroying the entire economic and social infrastructure" (20) The system of autocracy adopted a model blending what we call unique partial rentierism and the systematic impoverishment of the overwhelming majority of the people. According to this model, this system of government provided some basic needs that prevent dissatisfaction from boiling over. This included providing basic grains at affordable prices. The regime also opened the door for appointment to state institutions, including the appointment of women, while granting workers modest wages.

## 2- Patterns and trends of violations of women's civil and political rights, and patterns and trends in the movement of legislation and procedures

The autocratic regime implemented an approach based on the violation of rights, including women's rights, in a systematic violation as a means of consolidating power, and this was done in light of the suggestion that the regime's goal is to liberate women, while its ideology is based on the exploitation of women and the violation of their rights. The regime sought to perpetuate the mental image that the "Leader Brother" is personally the source of rights and freedoms granted to citizens, especially women. It also sought to perpetuate a mental image that Gaddafi is the liberator of the new generation of females and males from the traditional patriarchal domination practiced by previous generations, specially the pioneers of the independence. Gaddafi claimed that he is the liberator of the young

<sup>19</sup> Eaton, 2018. p.4.

<sup>20</sup> Abuhadra and Ajaali. 2014. p. 9.

For further reading see:

Abu Ras, Ali (2017) Reviews of the role of traditional leaders in resolving tribal land disputes, Bani Walid as an example. In Ibrahim, Suleiman and Jean Mikhail Otto (edited), treatment of real estate property disputes in post-Gaddafi Libya, within the framework of transitional justice. Leiden: Van Vollenhoven Foundation for Law, Governance and Society; Benghazi: Center for Law and Society Studies.

"workforce" (the proletariat) in the class struggle. The irony is that there was no real link between Gaddafi and the generation of young men and women. Rather, this mental image was formulated to create unreal legitimacy and to cover up the unprecedented and severe and systematic repression.

Gaddafi did not rely on popular support or a strong state structure, but rather on a strong security sector that was empowered separately from the structure of social classes in society.<sup>(21)</sup>

The revolutionary trend launched by Gaddafi was based on the systematic suppression and abuse of human rights at the individual and collective levels. In addition to the arrest campaigns, and the attempts to brainwash the citizens, as the Maoist revolutionary trend was based on that during the implementation of the Chinese Cultural Revolution. The system of autocracy established the women's union, which became one of the tools of oppression. (22) He also created the concept of the Nuns of the Revolution, which represents an application of the exploitation of women as a political tool in oppression and weakening society, on the one hand, and on the other hand, gaining its legitimacy as the liberator of women and the grantor of rights to them. In order to promote the role of the new woman, many new female formulas have been introduced, the most important of which are the Women's Revolutionary Committees, the Women's Revolutionary Guard, and the offices of the Jamahiriya Girl with Student Associations. These organizations and concepts led to the entry of some Libyan women into the elite circle close to the regime, but some of these ideas did not find acceptance among women at the grassroots level, nor among the vast majority of Libyans in general, and in particular, the idea of revolutionary nuns was considered unacceptable. (23)

<sup>21</sup> Akl, 2016. p.2.

<sup>22</sup> Muhammad Yusuf al-Maqrif. (2018) Gaddafi's Coup. Revolutionary Tyranny and the Genius of Foolishness. Part One. The Oxford Center for Libyan Studies. Oxford. P. 640. (in Arabic)

<sup>23</sup> Amal Al-Obaidi. The development of the women's movement in Libyan society between empowerment and activation. Documentary study. June 2006. (in Arabic)

Although the Gaddafi regime used to encourage the accession of women to political positions as a propaganda, their participation in politics and public affairs was still very little. For example, only six women were promoted in the secretariat of the General People's Congress (Women Affairs and Social Affairs at the General People's Congress), and only two were promoted in the General People's Committee in (Education, Culture and Media) during the period 1977-2003, and a small number of women were appointed as secretaries (Ambassadors) for some popular offices abroad (embassies). (24)

In the aftermath of the Bab al-Aziziyah events in May 1984, women's rights were subjected to a wave of severe violations, as a number of women were detained for long periods. The arrest was in violation of the provisions of the Criminal Procedure Law. The detainees did not have access to lawyers. They were not brought before the judiciary in fair trials. During the period of detention, the women were subjected to sexual abuse. Women who were subjected to these violations did not have access to psychological rehabilitation services, and those responsible for the violations were not identified, and thus they were not held accountable. Women also did not have access to a subsequent judicial or administrative redress<sup>(25)</sup> before either the local or the international courts. No group of women has taken action to obtain compensation based on whether their rights as collective rights have been collectively violated.

### 3- Patterns and trends of violations of women's right to education and patterns and trends in the movement of legislation and measures

For 42 years, women and girls have been subjected to violations of their right to education within the context of the autonomous regime's use of education as a tool for mobilization, oppression and socio-economic

<sup>24</sup> Amal Al-Obaidi. Ibid,

<sup>25</sup> Administrative redress means raising the grievance and complaint to the administration and obtaining reparation for the damage resulting from the violation on the authority of the administration (for example: monetary compensation or providing alternative housing ... etc.)

weakening of society, while taking legislative measures to attract women and consolidating the mental image that the official authorities adopt a progressive approach in protecting rights internally and externally.

At the university level, the official authorities have made the university a scene of execution and have practiced various violations against female students whom expressed their personal views and objected to the method of executions and torture

On 7/4/1976, Gaddafi began to conduct public executions in universities and ordered male and female students to attend to witness the executions. He also imposed penalties on female students who expressed resentment and refused execution. Members of the Revolutionary Committees also beat some of the students who objected. Official authorities ordered that some of these operations be carried out by women who are members of the revolutionary committees. The university became a scene for executions, and this came to complement the transformation of public squares as a scene for executions also. In addition to the civil and political violations involved in the executions, this also constituted a violation of the right to education. During the wave of executions and their aftermath, the official authorities launched a campaign of arrests of female students who expressed their views and objected to the violence and torture. The list of detained

<sup>26</sup> In-depth interview (July 8, 2020) with Amina al-Hassia, member of the Shura Council of the Elders of Al-Bayda. Ms. Amina al-Hassia recounts: "In the events of April 1984, I was 19 years old and I was studying in the medical school and during the exams period, we were surprised by the hanging in front of the central library to execute Mustafa Al-Nuwairi, who was a student in the College of Law, after he was accused by the People's Court of being Exhibiting Colonel Muammar Gaddafi's religious ideas All college students were gathered to attend the execution in the university's yard. Some students tried to escape and hide in the bathrooms to avoid seeing the horrific scene. Female students were pulled from their hair by members of the Revolutionary Committees until the execution square. When the students became hysterical and started screaming and wailing, we were whipped by Abdul Salam al-Zadmeh, one of the men close to Gaddafi, which left its marks for several years and required treatment. After that, we were locked up for an entire day at the university and handed over to our parents after we were besieged and locked up in the university for a full day, and we were handed over to our families after interrogating them after signing a pledge. After that, we were dismissed with a political ultimatum".

female students included Jamila Falaq, Majda Al Sahli, Fatima Al-Taeb and Ihssan Bin Ali. (27) As a result of these arrests, the detainees were deprived of their right to education for expressing their political views.

According to testimonies made by some of the detainees, during the period of detention, official authorities practiced systematic and psychological torture against them, threatened them, kept them in solitary confinement, prevented family visits, demolished their homes, and forced false and disgraceful confessions on television including that they had contacted the opposition abroad and practiced prostitution. (28)

At the school level, before and after the executions, official authorities implemented the militarization and revolutionary approach of education. The official authorities imposed the inclusion in educational curricula of

<sup>27</sup> Al Jazeera Documentary Channel. Women in the grip of Colonel Muammar Gaddafi. 2019 28 In-depth interview (27 June 2020) with Zakia Al-Taeb, a political prisoner, who is the sister of a political prisoner, Fatima Al-Tayeb, who was imprisoned for four years following the events of Bab Al-Aziziya in 1984. Mrs. Zakia Al-Tayeb recounted in her testimony: "During the events of 1983, how some female students (Jamila Falaq, Sophia Boudajja, Sarah Al-Shafei) at the University of Qaryounis wrote verses of poetry on the walls of an amphitheater opposing the regime and the revolutionary committees that were ruling the university and wreaking havoc on it, They were arrested and interrogated in Camp 7 April in Benghazi, which was a den of terror and torture, and then they were sent to Tripoli, and there the investigation and torture was at its peak and at the hands of some military officers, to extract their confession to forming an organization despite this being incorrect, and after several months of imprisonment And torture, they were expelled from the university and denied civil rights. As for the events of 1984: Which was more violent than its predecessor, so the women were arrested (Fatima al-Taeb, and her sister Zakia al-Taeb, who was released after two weeks, as well as Majida al-Sahli, Iman al-Fettouri, Mona al-Jarnazi, and her elderly mother, Turkiya al-Gharyani). Hands and black bags were placed on their heads, which led to their feeling of suffocation, stunned, and fear of what would happen. In Tripoli, the treatment was more horrific, as they were placed in a large yard and turned to the wall with pushing until one of them was injured, then each of them was placed in a solitary cell and prevented from talking through the doors and they remained cross-legged for days except for the time of the only meal that lacks all Feeding materials, in addition to the continuous investigation even during the night. As for the methods of torture, there is no embarrassment (rabid dogs, beating, falaka, threats to kill their children, threats to rape), and after three months of torture, including the month of Ramadan, they were transferred to Al-Jadida prison (protection section The woman) was placed in one room isolated from the outside world, and three female soldiers were added who tried to escape from the military college to try to expose them to what was happening in the Military College for Girls.

revolutionary mobilization materials combined with military training within what was known as the 'mass creed', which has become a compulsory subject with its military component. The official authorities also disregarded obtaining the approval of the students or their guardians on this aspect. The students were subjected to this without regard to their willingness to participate in these activities and exercises, which resulted in the suspension of the education process for a large number of girls.<sup>(29)</sup> The phenomenon of the militarization and revolution of education and the violations it entailed continued from the late 1970s to the late 1980s.

Revolutionary official authorities have made recruitment and revolutionary committee membership a condition for obtaining de facto missions abroad, and therefore granting benefits to certain groups of female students is discrimination based on political affiliation, which is contrary to the Covenant and local law. The right to education, as stated in the International Covenant on Economic, Social and Cultural Rights in Article (13, 14) is not limited to the element of availability only, but to other elements represented in the extent of accessibility, quality, non-discrimination against individuals and groups; The extent of its acceptance by individuals and groups from many aspects, including the cultural aspect. (30)

<sup>29</sup> In-depth interview (30 June 2020) with Suad Al-Senussi Al-Ghazali, president of the "Labbyak Watani" organization, which is a charitable civil society organization, and has several contributions in the field of national reconciliation and mediation. The schools, although they belong to a family known for their knowledge, religion, and culture. She refuses to send their girls to school, and Mrs. Suad Al-Ghazali has resumed her education and obtained a diploma in business administration and she is a grandmother after the February 17, 2011 uprising.

<sup>30</sup> Article 13 (3) states that "States Parties undertake to respect the freedom of parents and guardians to secure the religious and moral education of their children in accordance with their own convictions." The Committee on Economic, Social and Cultural Rights believes that this element allows public schools to teach topics such as the general history of religion and ethics if presented in an objective and unbiased manner, and with respect for freedom of opinion, conscience and expression. It notes that public education that includes education for a particular religion or belief is inconsistent with Article 13 (3) unless it provides for exemptions or non-discriminatory alternatives that can suit the wishes of parents and guardians.

Within this context, the official authorities have issued legislation that promotes girls' enrolment in education with a view to of occupying the youth. They were focused on how many students they enrol rather than the quality of education. Article 23 of Law No. 91 of 1991 stipulates that: "Every citizen has the right to education, knowledge, and the choice of knowledge". According to the study titled 'The Educational System in Libya, Elements of Analysis of Failures, a Development Strategy, prepared by Libya's delegate to UNESCO in 2012, Abd al-Salam al-Qalali:

"Regarding enrolment in university education, in 2008 Libya ranked 37th at the international level and first at the Arab level. This was only because the only path open to high school graduates was to enrol in education at the university level, and also as a result of social pressure towards the need for higher education institutions, and the absorption of active youth power in such institutions in order to distract them.. The previous education system found a solution in expanding universities and higher institutes aimlessly to attract students in large numbers without a clear policy for placement of students into useful specializations or taking into account the quality of the education." (31)

This has resulted in a sharp decline in the quality of education, which is reflected in the education indicators.

## 4- Patterns and trends of violations of women's right to health and patterns and trends in the movement of legislation and measures

During this stage, resources were withheld from the health sector in violation of the concept of the obligation of states to implement the right by allocating the maximum of their available resources.<sup>(32)</sup> The problem was not a lack of resources as, on the contrary, the resources were available. This gross negligence took place at a time when the regime seized the country's wealth and public money and committed the systematic crime of wasting

<sup>31</sup> Abd al-Salam al-Qalali, 2012. P18.

<sup>32</sup> Economic and social rights. Previous source. P.15.

public money. At that time, the Gaddafi regime was spending vast amounts of money outside Libya illegally, as human rights studies and specialized investigations have shown.<sup>(33)</sup>

It is worth noting that the regime has not only partially withheld resources from the health sector, but rather completely. It did not even allow the allocation of limited budgets to ensure that the health sector remains afloat, at least, which violates the concept that minimum basic levels of rights must be fulfilled. As a result, hospitals were not renovated, and there were insufficient medical staff and equipment, and the health system in Libya now lacks the minimum level of services, equipment, technical knowledge and scientific research as a result of decades of deliberate gross neglect.

This also resulted in the unavailability of necessary treatments and health services for many diseases and injuries for which the necessary treatments and health services are available in the overwhelming majority of countries around the world. This led to the necessity of large numbers of patients traveling abroad for treatment.

Bank 33 for International reconstruction and development and internationcorporation and multilateral finance investment guarantee agency country engagement not for the state of Libya for the period FY 19-FY 20, June 26, 2018. https://cutt.ly/mhFEJIb

Human Rights Council Thirty-first session Agenda items 2 and 10 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General. p. 11.

Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya: detailed findings. A/HRC/31/CRP.3

https://www.ohchr.org/Documents/Countries/LY/A\_HRC\_31\_CRP\_3.pdf.

Background: From Repression to Civil War. https://cutt.ly/rhGEV7V

Borzou Independent. How a tangled and deadly web of global corruption spreading out from Gaddafi's Libya threatens to topple Justin Trudeau.

https://cutt.ly/4hFRql8.

Gaddafi relations haunt Sarkozy in 2007 campaign financing case. Issued on: 20/03/2018 - 17:50 https://cutt.ly/ihFRdib

Libya campaign funding: Nicolas Sarkozy is back in court. By Neïla Latrous, and AFP. Posted on Monday, 15 June 2020.

https://cutt.ly/RhFRWUI

Also, the measures taken by the autonomous system, especially in reducing spending on the health care sector to a level below the minimum, are an embodiment of the concept of retrogressive measures that countries have committed to avoid. Regressive measures are defined as those measures that directly or indirectly lead to the taking of steps that entail a reversal of what has been achieved regarding the rights recognized by the Covenant. The deliberate retrogressive measures are represented in a new law making primary education voluntary rather than compulsory or by reducing public expenditure for maternal health care, which will cause a dramatic increase in infant and maternal mortality.<sup>(34)</sup>

Regressive measures regarding the right to health were deliberate. Corrective measures were taken neither immediately nor after a long period of time.

In addition to the above, it is worth noting that the phenomenon of neglect of the health sector and the forced mass of citizens traveling abroad to receive treatment has continued for forty-two years, violating the concept of the obligation of states to ensure the progressive real enjoyment of these rights. During this extended period, official authorities have deliberately not allowed the health sector to improve gradually, and hospitals continue to be unable to treat a large number of diseases and injuries. The deficit in equipment, services, and national medical staff has also persisted. Overall, during this stage, the health sector situation has only worsened.

The worsening of the continuing deterioration of the health sector has been reflected in phenomena, problems and issues, most notably the issue of injecting children with AIDS-contaminated blood. In Al-Fateh Children's Hospital, in Benghazi, 462 Libyan children were injected with AIDS-contaminated blood which exposed nursing mothers to contracting the virus. Foreign nurses and a foreign doctor were accused of this and eventually released by Gaddafi in the framework of a political deal unknown to this day. The problem surfaced in 1998, and many victims died within a short period, all children The victims also endured tremendous suffering in addition to the physical injuries and their debilitating repercussions,

<sup>34</sup> Economic and social rights. Previous source. P32.

alongside the deterioration of the children's psychological state due to the effects of the disease on them, the fear of death, the result of isolation imposed on them, and social stigmatization due to something they are not responsible for. Psychological support services were not available for children in Libya. Additionally, the families of the victims have suffered multidimensional suffering for at least twenty years. The total number of families of the victims is approximately over 1600, while the number of extended families involved in the issue is many times that. Families also suffered health, psychological, economic, livelihood and social suffering, and many of them were subjected to social stigmatization. Psychological and social medical services were not available that would support them through overcoming this ordeal.

The autonomous regime exploited the victims and their families politically in the context of the pressures that were exchanged with the countries of the European Union. In 2007, after the death penalty was imposed on the accused medical professionals, a UN settlement of the case was concluded after external pressure, especially from the European Union and some of its major countries such as France. The settlement included granting each victim approximately one million dollars, and several investigations and studies conducted by human rights organizations concluded that official authorities committed the mass crime. On the level of the right to health, the case reaffirmed what was previously proven; that the health sector has witnessed a very sharp deterioration, and that this is the result of negative measures taken wherein developing the health sector was deliberately overlooked. However, despite the huge number of victims and their suffering, and the suffering of their extended families, the official authorities did not initiate a gradual or even partial reform of the health sector during the twenty years following the discovery of the problem, and the phenomenon of masses of citizens having to travel abroad to receive treatment continued.

Moreover, official authorities have deprived the health sector of UN technical expertise, violating the principle that outside assistance should be sought. (35) In the previous section, we made it clear that the Covenant

<sup>35</sup> See economic and social rights. Handbook of National Human Rights Institutions. P. 17.

obligated countries to accept assistance where appropriate. While Libya did not need financial assistance, it did need technical medical assistance at all levels. As is the case in most countries, especially developing countries, they needed training programs for doctors, nurses, and technicians who manage the use of modern medical devices, laboratory specialists, and scientific research specialists.

As legally prescribed, failure to implement these measures constitutes in and of itself a negative decision to abstain. It is well established that it is sufficient to demonstrate this decision by showing the failure to take the required measure and indicating its impact. Applying this to the Libyan case, we find that the deterioration of the health situation during the period of rule of the autocratic regime and the need for citizens to travel for treatment is in itself evidence of the negative decision to refrain from accepting technical assistance. After the end of the autocratic rule, the study showed that the overall health system situation in terms of the technical level and the level of equipment and services is very regressive. This evidence supports the previous evidence, as is apparent in the summary of Ibrahim Sharqia's study contained in the following paragraph:

For 42 years, the autocracy has not only prevented the formation of political parties and civil society organizations but has refused to allocate very little to investing in the country's development. Most of the country's resources have been squandered on pointless projects like the Great Man-Made River or on a lost war with Chad that spanned nearly 10 years. The autocracy has left Libya with minimal development in nearly every sector - including education, health, industry, and agriculture - and has left a corrupt, ineffective bureaucracy. (36)

<sup>36</sup> Ibrahim, Sharqieh (2013). Reconstructing Libya: Stability through National Reconciliation. Brookings Doha Center Analysis. Paper Number 9. P.4.

## 5- Patterns and trends of violations of the right of women to work and patterns and trends in the movement of legislation and measures

During four decades, women and girls have been subjected to violations of the right to work within the context of the autocratic regime's use of labour legislation as a tool to create legitimacy, to control the fate of a wider segment of citizens, to attract women, and to establish a mental image among the public opinion that official authorities adopt a progressive approach to protecting rights internally and externally, and using it as a guarantee that discontent does not turn into disobedience.

Recruitment, retention and promotion policies have severely weakened women's position in the labour market, hence the number of women working in the formal economy and the labour market remained very small.

There are a number of direct factors that can be attributed to the failure of the legislative package to achieve the goal of sufficient access to the labour market in the public and private sectors. There is no doubt that the climate of severe oppression has the largest share in the reluctance of women to join the labour market. It can also be said that rampant corruption in the public and private sectors has made a great contribution to this. The majority of leadership positions in public institutions and private sector companies remained the preserve of men, and the phenomenon of the limited participation of women in executive bodies and councils in public sector institutions continues. In addition, the absence of women's participation in the boards of directors of large and medium-sized companies also persists. Essentially, the legislative package did not result in a minimum balance between the percentage of women and men in the labour market.

Laws passed during the period of the autonomous system were based on a perception of the limited economic participation of women as well as employment. This is reflected in Labour Law No. 12 of 2010, which prohibited in Article (24) the employment of women in some types of work "that do not correspond to their nature as women, and which will be specified in the executive provisions". However, it has not been evident that relevant provisions have been issued that determine what fits the nature of women and what is forbidden for them.

This text suggests that there is an assumption based on the fact that women are suitable for only certain fields of work and that it is not suitable for them to work in other fields. However, this assumption has not touched the test of reality even in the presence of an excess of working women. (37)

This legislation is contrary to the principle of equality and the principle of non-discrimination based on gender. All international legal frameworks concerned with women, to which Libya has joined, have stipulated that the two principles must be respected. It is also worth noting that there is a contradiction in the provisions of the labour Law. For example, the aforementioned article states that discrimination between women and men is prohibited, yet also includes what appears to be positive discrimination for women by stipulating that working hours may be reduced for them in some professions and jobs for which a decision is issued by the People's Committee and in accordance with the executive regulations of the law.

In addition, the penalty for sexual harassment in the workplace remained unclear, and there were also no integrated laws regulating sexual harassment in the workplace. The legislation also did not contain specific provisions prohibiting discrimination on the basis of sex in hiring, retention, and promotion. (38)

<sup>37</sup> UNDP, UNFPA, ESCWA, p.18, 2018.) (Libyan National Report, Beijing +25 2019 FPSC and READI, 2016.

Bugaigis and Tantoush, p. 19, 2017.

<sup>38</sup> Article 2 of labour Law No. 12 of 2010 stipulates that "Work in the Great Jamahiriya is a right for all citizens, male and female, and a duty for them based on the principle of equality in employment between them or between them and other foreigners residing in the Great Jamahiriya legally residing in the Great Jamahiriya, and it is strictly prohibited to force, forced labour and manifestations of Injustice and exploitation.

Article 3 also stipulates that "filling jobs and professions in all work and production sites shall be based on the principle of competence, merit, ability and merit. The choice between candidates is based on integrity, transparency and fairness, and favouritism or discrimination is prohibited because of union affiliation, social origin, or any other discriminatory ties".

While the labour legislation and policies and the assumption of public office that have been amended greatly over the past forty years, have included some provisions adopted by many countries, they have not resulted in an end to the curtailment of the right to work and hold public office for women. The autocratic government system issued a legislative package that allowed women to participate in state institutions, and this included the judiciary. Under the 1989 Law of the Judiciary, women could work in the judiciary, where it stipulated the right for women to assume the functions of the judiciary, public prosecution, and case management under the same conditions established for men. This is protected by cancelling all texts violating this law. (39) This law also granted the right to Libyan women to assume the position of the judiciary by adjudicating in the disputes and lawsuits brought before them after this position was the preserve of men only. After the issuance of this law, the first decision was issued in the same year to appoint two female judges in North Benghazi Court, until the number of women working in the judicial bodies reached 1,431. Since then, women have been able to occupy the highest judicial ranks, such as presiding over the Court of Appeal, membership of the Supreme Judicial Council, and working in the Supreme Court, whenever they meet the conditions and standards of the appointment . However, the legislation for the judiciary and women in that era was marred by a lot of fluctuation and discrimination.(40)

<sup>39</sup> The first and second articles of Law No. (8) of 1989 regarding the right of women to hold judicial positions.

<sup>40</sup> In-depth interview (18 July 2020) with Counselor Naima Jibril, former President of the Benghazi Court. In it, she recounted her personal journey and that of Libyan women in their struggle to gain access to justice. When she graduated in 1972, her appointment was rejected according to the Judicial System Act at the time, even though it does not stipulate any discrimination between male and female. She was appointed as an assistant legal researcher according to the civil service system, while all of her male colleagues were appointed to the judiciary, which she considered violence against her and against all women, and the journey of struggle began to reach the judiciary until the political will, represented by Muammar Gaddafi, interfered, as he also held the status of supreme president of the Judicial Council according to the constitutional declaration at the time, so she and Zainouba Al-Tashani were appointed in 1975 according to the law The judicial system in the administrative judiciary is a fourth-degree judicial member in case management, and this was the first entry of women into the administrative judiciary. Fatima Al-Barasi followed them, but in 1975 a

In terms of the Labour Relations Law No. 12 of 2010, which prohibited men from discriminating against women at work and in wages of equal value<sup>(41) (42)</sup>. The law also gave women the right to paid maternity leave for a period of 14 weeks, which increases to 16 weeks if the woman gives birth to more than one child (twins, triplets, etc.). Employers are also prohibited from terminating a woman's employment because of pregnancy or because of absence during maternity leave. In addition, employers who employ foster women are required to provide childcare facilities.

The law also stipulates that working women who are breastfeeding have the right to a break of not less than one hour during working hours, with a guarantee that this does not lead to a reduction in wages. It also provided her with unpaid care leave of up to a year to care for parents, children, or spouses. The law also requires employers to provide custody if they appoint a sufficient number of female workers (not specified in the law), and more than one employer may participate in providing one custody, in addition to prohibiting sexual harassment or encouraging acts of sexual harassment. Although Articles (368-389) of the penal code criminalize physical and sexual assault in the workplace, there remains a wide gap between legislation and implementation. Whereas the effects of labour legislation were limited to randomly increasing the number of women participating in the formal economy and the quality and socio-economic impact of work declined.

committee was formed from the Ministry of Justice to amend the judicial system law. The new law stipulated that the judge be a man and then the door was closed again until the Judicial Law was amended in 1989, after which the Libyan woman was appointed as a judge and a public prosecutor. However, neither the judiciary nor the judges in general were free of the authoritarian regime and its attempts to seek insinuation on the authorities, nor from discriminatory policies. As stated in Jibril's testimony, she was prevented from appointing to the judiciary after the amendment of the Judicial Law until 2006, although she was the first to be appointed in the Administration of Administrative Judiciary. This is because of her political positions and her opposition to the regime in the past. In return, those who were close to the regime were appointed. This indicates that there were discriminatory policies in appointing women and men in the judiciary based on political loyalties.

<sup>41</sup> Article No. 24 of labour Relations Law No. 12 of 2010.

<sup>42</sup> UNDP, UNFPA, ESCWA, 2018.

<sup>43</sup> Article No. 12 of Labor Relations Law No. 12 of 2010.

## Libya joins international legal frameworks within the context of the formal protection of women's rights

Libya joined several international legal frameworks that affected women's work, but this accession was largely formal and the provisions of those agreements, treaties and protocols were not applied. Libya has acceded to the nine major UN human rights conventions, (44) in addition to the Optional Protocol to the International Covenant on Civil and Political Rights relating to the submission of complaints by individuals (1989). Libya has signed the Optional Protocols to the Convention on the Rights of the Child and acceded to eight ILO conventions on human rights in general, three of which are directly related to the rights of working women and are represented in maternity protection conventions (No. 3, 103) and discrimination after maternity leave at work and in employment No. (111). Libya also acceded to the Equal Pay Agreement, (45) The Convention on the Elimination of All Forms of Discrimination Against Women, (46) the Convention on the Political Rights of Women, (47) and the Convention on the Nationality of Married Women. (48) Libya has also acceded to the Convention on the Elimination of All Forms of Discrimination Against Women, (49) thus becoming applicable as a binding domestic legislation for the national judge. Anyone who has an interest has the right to defend it and adhere to its provisions before the Libyan judiciary, as it is part of the internal legislation.

Libya has also signed the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women. (50) During the accession, it expressed its general reservations that this accession does

<sup>44</sup> https://www.ohchr.org/AR/ProfessionalInterest/Pages/CoreInstruments.aspx (in Arabic) And

https://cutt.ly/JhFU7QK (in Arabic)

<sup>45</sup> Libya acceded to the Equal Pay Agreement on 3/9/1989.

<sup>46</sup> Libya acceded to the Convention on the Elimination of All Forms of Discrimination Against Women, 5/16/1989. And it was published in the Official Gazette No. (20) for the year 1989.

<sup>47</sup> Libya acceded to the Convention on the Political Rights of Women on May 16, 1989.

<sup>48</sup> Libya acceded to an agreement regarding the nationality of married women on May 16, 1989.

<sup>49</sup> Libya acceded to the Convention against Discrimination in Education on 6/7/1976.

<sup>50</sup> Libya signed the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on June 18, 2004.

not contradict the personal status laws derived from Islamic Sharia. On July 5, 1995, Libya notified the Secretary-General of the United Nations of its decision to amend its reservation and make it more specific by stating that, "Libya announces its accession to the Convention on the Elimination of All Forms of Discrimination against Women adopted by the United Nations General Assembly on 12/18/1979 with reservation. The following: Article (2) of the agreement shall be implemented with due regard for the peremptory provisions of Islamic law related to determining the shares of heirs in the legacy of a deceased person, whether female or male, and paragraphs (c) and (d) of Article 16 regarding marriage and divorce".

The approach of the official authorities regarding Libya's accession to the aforementioned international legal frameworks was a formal approach aimed at mitigating the severe international human rights criticisms levelled against the country. The isolation imposed by the autocracy on the Libyan nation included preventing interaction with countries of the world, even at the level of neighbouring countries, as well as the specialized international organizations, foremost of which are the United Nations organizations. This was reflected, for example, in the comments of the CEDAW Committee on the national report issued in 2009, which were mostly negative. (51)

Despite accession to international conventions and treaties, legislation was characterized by fluctuation, regression and discrimination. For example, Libyan women do not enjoy the same rights as those established for Libyan men, such as passing their nationality to their children or foreign wives. Regarding the right of Libyan women to give their children their nationality, this right has retreated from what it was in the era of independence, represented by the constitution or the Nationality Law No. (17) of 1954, as it was considered a Libyan whoever was born to a Libyan mother or father or was born in Libya or he or she has resided in Libya for a period of not less than ten years. (52)

<sup>51</sup> https://www.refworld.org/country,CEDAW,,LBY,,49c0ce7e2,0.html

<sup>52</sup> Article No. 8 of the 1951 Libyan Constitution.

With regard to the provisions of Law No. (18) of 1980 regarding the provisions of the Nationality Law and its implementing regulations, we find that it has allowed the children of a Libyan woman married to a foreigner to obtain the nationality of the husband, but in accordance with the conditions and controls stipulated in Article (3) of the bylaw. In 2010, Law No. (24) was issued, which permitted under Article (11) the granting of the children of Libyan female citizens married to foreigners the nationality of the mother, leaving the order specifying the necessary controls for the implementation of this article to the executive regulations that had not been established until this hour, which essentially makes the law void -not applicable and enforceable.

On the other hand, and despite Libya's accession to and ratification of the above-mentioned international treaties, the authorities were unable to put in place a law on domestic violence, and the law continued to acquit a rapist according to Article 424 of the Penal Code if he married his victim and did not divorce her for three years.

What can be deduced from the Gaddafi regime's dealing with legislation affecting women is that the issuance of favourable and positive legislation does not automatically mean the protection of women's rights. The issuance of "progressive" legislation in isolation from a genuine human rights approach aimed at protecting rights, including the rights of women, is an emptying of the idea of legislation and the importance of legislative measures from their content. We would like to say that it is not correct to evaluate the issue of legislative measures numerically or quantitatively, but rather that its quality should be critically appraised.

# Part Two: An Analytical Review of Patterns and Trends of Violations during the Transition Period (20112020-)

Although women were at the forefront during the 2011 uprising and the long-running protests, they were directly exposed during and after the protests to systematic, multidimensional violence. As with all conflicts, the level of exposure of women and girls to violence, and the damage and impact of the conflict was by far greater than the level of exposure for men. Although this necessitated making the legislative environment a safe environment that provides protection for women, it - as a result of the inaction that prevailed among the actors concerned with the performance of the legislative function - remained incomplete. Consequently, during the transitional period, the phenomenon of violence against women continued in its various forms, the related violations worsened, and the legislative movement failed to provide the minimum level of protection and prevention for women.

The vulnerability of women to violence and violations appears in the context of the deteriorating economic situation, and this has exacerbated the suffering of women and livelihoods at all levels. The salaries of the public sector workforce have been delayed for several months due to a lack of liquidity, and according to 2019 estimates, one-third of the population now lives along or below the national poverty line. The level of inflation has increased, and the purchasing power of the local currency has decreased. Meanwhile, huge national and foreign capital and deposits have emigrated from Libya, and the volume of foreign direct investment and foreign exchange inflows have decreased.

The subsistence families consumed a great deal of their savings and sold some of their assets, and their indebtedness increased. The level of normal poverty and the level of multidimensional poverty increased. A war economy emerged, dominated by warlords. The arms trade and human trafficking spread in countries experiencing conflict, and large

<sup>53</sup> Libya Population below Poverty Line. Index Mondi.

sectors of society moved from the formal economy to the informal. The unemployment rate rose. The administration was also forced to spend a large amount of the budget on military items. This has come at the expense of spending on development in general, and at the expense of spending on empowering women, in particular. This was reflected, for example, in the administration's delay in completing the budget allocation of some national institutions concerned with women's affairs, such as the Women's Empowerment Unit in the Government of National Accord.

Thus, violence against women has taken many different forms. Considering the nature of the present paper and its unity, we confine ourselves in the following paragraphs to some pictures that illustrate the most prominent patterns and trends of violations.

#### 1- Violating women's civil and political rights

Since the beginning of the uprising in February 2011, a wave of violations of women's civil and political rights has emerged in light of a new campaign launched by new authoritarian currents aiming at extending hegemony over society and women. Since the liberation speech on October 20, 2011, and the announcement by Mr. Mustafa Abdel Jalil, head of the Transitional Council, to abolish the prohibition of polygamy based on the constitutional declaration and the article of Islamic law as a main source of legislation, a systematic campaign by the state and individuals has begun to undermine the gains already made by Libyan women in the past.

In his meeting with Human Rights Watch, Abdul-Jalil said that the existing legal restrictions on polygamy in Libya had been suspended under the Constitutional Declaration, as he considered these restrictions contradict Sharia law, which - according to the transitional constitutional declaration is the main source of legislation. On February 5, 2013, some restrictions on polygamy were lifted. The Constitutional Chamber of the Supreme Court ruled that Libya's laws governing marriage, which require the husband to obtain the consent of his current wife before marrying another wife, contradict the Libyan Constitutional Declaration for being inconsistent with the provisions of Islamic law. According to the ruling, "The Constitutional

Declaration has explicitly stated that Islamic Sharia is the main source of legislation, so laws should not be issued that violate the provisions of Sharia. The Marriage Law restricts polygamy to a set of conditions that make polygamy usually impossible, that is, it leads to the implicit annulment of polygamy. Accordingly, it is a breach of the constitution "(54) On the other hand, in April 2013 the Ministry of Social Affairs suspended the issuance of marriage permits for Libyan women married to foreigners, after the Libyan Mufti demanded the government prevent women from marrying foreigners. (55)

After the end of its mandate, in 2015, the National Conference amended the Personal Status Law, claiming that some of its articles violate the Constitutional Declaration and Islamic Sharia as the main source of legislation. These amendments would expand the scope of minors' marriage, withdraw from the woman the authority to testify to the marriage contract, withdraw from the woman the will to divorce, and withdraw from the woman her right to be equal with men in the obligation to spend whenever she was affluent, and not equal responsibilities between the two parties.

This change also allows polygamy without restriction. Among the most prominent articles that have been amended (Article 18) relate to a husband's right over his wife. Paragraph (A) states that "alimony and its consequences in the event of the husband's hardship and the wife's convenience in accordance with the provisions of this law" has been cancelled, and Article 33 that was restricting polygamy and which was a condition for the husband to obtain the consent of the wife to marry another before the competent district court, or a ruling of approval issued by the competent court. Also, Article 48 / A was amended, which decided divorce by the will of the two spouses in exchange for the wife divulging the word 'khula' or 'divorce', while it stipulated, after the amendment, that "Khula' is the husband's infliction of divorce in exchange for the wife's compensation with the word khula or divorce" (56).

<sup>54</sup> Human Rights Watch Report - Women's Rights in the New Libya, May 26, 2013.

<sup>55</sup> Ibid.

<sup>56</sup> Law No. 14 of 2015 amending some provisions of Law No. 10 of 1989 regarding provisions relating to marriage and divorce and their implications https://cutt.us/GIaSJ

On the other hand, extremist voices have arisen who believe that "there is no guardianship for a woman in Islam" and demand the abolition of "laws that contradict Islamic law." For example, the constitutionality of women's access to justice has been challenged. (57) The appeal was not decided to stop the Constitutional Chamber from operating the decision of the General Assembly of the Supreme Court.

In addition, the military governor of the region extending from Derna and Bin Jawad, on February 16, 2017, issued a decision banning Libyan women under the age of sixty from traveling abroad without a mahram (an adult male companion from the family)<sup>(58)</sup>. Because of this, a human rights campaign was launched in which women's rights defenders participated to confront the decision and<sup>(59)</sup>. The campaign resulted in the success of human rights efforts, and the military ruler issued a decision to suspend<sup>(60)</sup>.

(61) However, that decision was later overturned. It is worth noting that this decision represents an integral part of the new wave of extremism that has its roots in the second half of the era of the autocratic regime, which has used extremists and portrayed itself as a shield against terrorism to enhance its artificial legitimacy. This was followed by the issuance of a decision to prevent citizens of the age groups 18 to 45 from traveling abroad without obtaining a security permit from the competent authorities. (62) The decision was justified by maintaining national security and protecting the country from infiltration. Article 3 of the decision also mandated the General

<sup>57</sup> Women's rights in Libya: preserving past gains and concerns for the future - Jazia Jibril; Legal Notebook.

<sup>58</sup> Decision of the Military Governor Derna - Bin Jawad No. 6 of 2017 regarding a travel ban.

<sup>59</sup> The Libyan Women for Peace Forum and Defender Center issued a statement denouncing the decision of the military governor. See the statement on the platform's website:

https://lwpp.org/news/details/72

<sup>60</sup> Al-Araby Al-Jadeed website, news entitled "Military ruler of eastern Libya requires security approval for travel of both sexes", published on February 24, 2014:

https://2u.pw/tpDpw

<sup>61</sup> The Libyan Women for Peace Forum and the Defender Center issued a statement denouncing the decision of the military ruler, see the statement on the platform's website https://lwpp.org/news/details/72

<sup>62</sup> The Military Governor's Decision No. 7 of 2017 regarding the annulment and addition of a ruling by Resolution No. 6 of 2017, issued on February 23, 2017.

Intelligence Service to grant security approval to civil society institutions, and then allowed the intelligence service to conduct investigations on the reasons for human rights defenders to travel abroad, in violation of the right to freedom of movement.

In addition, the Civil Society Commission issued Circular No. (1), in March 17, 2018, in which it requires organizations operating in Benghazi to inform them when carrying out any activities in coordination with the UN organizations and to inform them ten days before travel in order to coordinate with the relevant security authorities and obtain their approval. These legislations and policies have led to the stigmatization of women human rights defenders, as well as presenting a license to many parties such as armed groups, and are considered the adoption of extremist and masculine rhetoric to target women's rights defenders, especially since official authorities have never sought to build a real partnership with civil society and women's rights defenders.

It is worth noting that these decisions are the result of the climate of extremism that began to spread during the eighties and nineties, with the advancement of non-violent and violent extremism in the country. At the time, the regime used this wave to portray itself as a shield against terrorism. The Libyans who joined the fighting in Afghanistan, and some of those who worked in the Gulf, some of them at home and in the diaspora, adopted extremist concepts that included belittling women and denying the human capacity of women and their eligibility for the general mandate. The most significant of these concepts is that women are not qualified to participate in family leadership, to participate substantially in economic life, to contribute to the public sphere, or to hold senior or leadership positions. It is noteworthy that entire families, including Libyan women, have adopted militant religious ideologies in a variety of formats. In the context of socialization, extremist perceptions have been instilled in the consciousness of emerging generations of girls and young women. (63) The wave of violence increased during the transitional period as a result of the weakness of its authority and infiltrated its structure.

<sup>63</sup> Monash University and UN Women. Gender Equality and Violent Extremism: A Research Agenda for Libya. 2019 P.26. https://bit.ly/3kfcqSL For more on the historical roots in Libya of the

Although the transitional period has provided a great opportunity to radically and completely reform women's public participation and political representation, the movement to build new constitutional frameworks (from which the legislative movement will emerge) has been marked by marginalization of women's participation. Constitutional frameworks have a direct, immediate and long-term impact on the reality of the women's legislative movement. These frameworks were intended to open a new chapter in the Libyan constitutional and legislative reality. After all, the constitutional orientation and the constitutional behaviour directly affect women in Libya, as they impact the legislative behaviour during the stage political stability, which is expected to follow the stage of transition in which we are living. In the Constitutional Declaration it was stated that "Libyans are equal before the law; they are equal in enjoying civil and political rights, in equal opportunities, and in terms of public duties and responsibilities. There shall be no discrimination between them because of religion, sect, language, wealth, gender, lineage, political opinions, or status - whether social, tribal, regional, or familial affiliation". (64)

In spite of that, when we look at the membership structure of the Transitional Council that issued the constitutional declaration, we find that it has only two women out of a total of one hundred and thirteen members. Also, during the Skhirat (Morocco) negotiations that were held in the winter of 2015, the official and international bodies designing the negotiation tracks took very shy steps in terms of promoting and supporting the participation of women in those negotiations, and some of the designers of the negotiation platforms expressed their rejection of the idea of women participating in the negotiations. Hence, an independent track known as the "Women's Path" was established, and in the end a small number of women participated in the negotiations. (65)

rise of the extremist Salafi trend and political Islam, refer to: Kakar and Langhi, the religious sector in Libya and peace building efforts. American Institute of Peace, 2017. https://bit.ly/2FNXFHw 64 Article 6 of the 2011 Constitutional Declaration.

<sup>65</sup> Zahra' Langhi. The political agreement through human rights eyes. February 24, 2016.

The political agreement was also beset by flaws regarding the issue of political positions, particularly about the participation and representation of women. First, the political agreement building process has neglected to give a serious and sufficient discussion to the issue of women's participation and effective qualitative representation and has dealt with it in a quantitative manner only. The process of building the political agreement did not address the agenda of women in issues of security and peace, despite the agreement's reference to the Security Council Resolution No. 1325 (2000)<sup>(66)</sup> related to women, security and peace. The agreement also forgot to stipulate articles that contain detailed and specific principles that reflect that agenda. It also did not adopt a gendered approach.

At the same time, the agreement repeated formal and stereotypical expressions that emphasize the necessity to consecrate women's participation, regardless of the type and effectiveness of participation. For example, in the preamble, the phrase "the necessity to increase the role of women in decision-making and political participation," in the second article stipulates respect for the principles of competence, non-discrimination and equitable representation of women. It is our belief that it is necessary to attribute the prejudice imposed on women in relation to the formation of the government resulting from the political agreement to these general texts which are in reality merely a repetition of what every eye falls on in any text dealing with the participation of women. In the first government formation that was rejected by the House of Representatives, women were represented by only six percent (6%) of the total membership, with two of the thirtytwo representatives being women. Then came the announcement of the Government of National Accord with three female ministers out of a total of eighteen ministers. However two of the three are female state delegates, essentially making them female ministers without administrative powers. We do not exaggerate when we say that this prejudice against women represents a waste of all the efforts of the civil movement in the previous period that focused on empowering women politically. What added to the unfairness of the matter was the government's failure to seek redress for deficiencies and apparent shortcomings by clarifying the mechanism used in selecting

<sup>66</sup> S/RES/1325 (2000)

ministers to explain the reasons for excluding competent women from working in the government, rather, the women's empowerment unit was deemed sufficient and yet it was subjected to the supervision of the President of the Presidency Council. This suggests that there is a tendency towards employing such units away from policymaking, superficially displaying the dedication to women's participation, while important sovereign positions are hidden from them and assigned according to quotas and deals. All this is due to the fact that the government is inspired by the political agreement that it was formed according to and by the indifference to the rights of women and their representation that characterized the process of building that negotiation.

The legislative movement was characterized by the marginalization of the public participation of women, and by shortcomings, vacillations, and retrogressive measures, contrary to what was stipulated in the International Covenant on Civil and Political Rights. While women at the beginning of the transitional phase, specifically on International Human Rights Day in 2011 in the first organized feminist movement, demanded the allocation of a representative quota equivalent to 30 percent, the National Transitional Council proposed the draft of the General National Congress elections (which was a legislative and executive entity at the same time), and did not require any quota for women, which the women's movement considered an unacceptable exclusion after an uprising in which women significantly participated. (67)

As a result of the women's movement and civil society efforts that demanded the adoption of a rotation mechanism between male and female candidates in party lists that were supposed to include 100 seats to ensure fair representation, Law No. (4) of 2012 for the General National Congress elections indeed adopted this mechanism. However, the lists included only 80 seats, and the lists of parties that did not respect this principle were actually rejected, which led to women obtaining 16.5 percent of the seats. Then there was a surprising decline represented in Law No. 59 of 2012

<sup>67</sup> Karama. Libyan Women Protest Proposed 10% Electoral Quota. https://bit.ly/3dG8RCq Reuters. Libya drops election quota for women. January 2012. https://reut.rs/34ehqkP

granting the Local Administration System one seat for women in municipal council memberships out of a total of thirteen seats. After this there was a slight improvement, but not enough in Law No. (17) of 2013 to elect the Constituent Assembly to draft the constitution, where women had a representative quota equivalent to 10 percent, meaning six seats out of sixty, which is a very small percentage. This percentage was set after the rejection of some GNC deputies, as well as those in general against the quota system, on the grounds that the representative quota system was discriminatory. Then there was another improvement, but it was also insufficient, represented in the allocation of Law No. (10) of 2014 for the House of Representatives elections to 16 percent of its seats for women. These seats were distributed to some electoral centres. (68)

The new draft constitution did not include the principle that a representative quota should be allocated to women. This, and according to a number of studies, indicates in electoral behaviour that the belief in the participation of women is still below the desired level. It is worth noting that the draft constitution did not contain feminine expressions that establish the principle of women's equality except in rare cases. The draft constitution also did not provide for the establishment of a national mechanism such as a higher council for women, as confirmed by the Beijing Platform for Action. Perhaps the biggest loophole in this project is that it left the issue of the nationality of the children of Libyan women married to a non-Libyan to the legislative authority to regulate it, and thus this may deprive her children of enjoying her nationality.

<sup>68</sup> Article 18 of Law No. (10) of 2014 for Parliament elections.

<sup>69</sup> Article 185 of the draft constitution for the year 2017 states: "Any electoral system guarantees women's representation by twenty-five percent of the seats in the House of Representatives and local councils for two electoral terms, taking into account the right to run in the general election," and the text in its first version determined the scope of the measure Transitional time period of "twelve years."

# 2- Violations of conflict-related sexual violence and violations of the right to health

There has been a wave of sexual violence against women related to the conflict and in turn a wave of violations of their right to health. However, the measures taken by the official authorities in the transitional phase regarding the right of assaulted women to healthcare, and the right of women to health in general, indicate that they violate the concept that minimum basic levels of rights must be fulfilled. A large number of women have been subjected to conflict-related sexual violence violations, such as enforced disappearances, kidnappings based on loyalties and political ties, (70) kidnapping for ransom, and sexual assault of women and men by militias while in detention.

Despite that, the previous legislative system remained the ruling. Article 242 of the Libyan Penal Code states that: 1- Anyone who penetrates another by force, threat, or deception shall be punished with imprisonment for a period not exceeding ten years. However, Libyan law does not contain provisions regulating rape or forced sexual intercourse during armed conflict. Rights activists demanded the introduction of new legislation regulating confrontation during armed conflict and war. A large number of experts agreed with the legal analysis and adaptation provided by Dr. Jazia Shiiter, a professor of law at the University of Benghazi, in her article entitled 'Victims of Sexual Violence and Protection Mechanisms in Libya', saying: "This text is not appropriate for the facts before us, whether in terms of the inaccuracy of the applicability of the material element because we are facing an act committed in wartime, or the moral element because the

<sup>70</sup> The war in Libya: The fate of the women of the Trahona' hostages remains unknown. BBC. June 2020.

https://bbc.in/3e7hvKF

<sup>71</sup> After Wisal's story: The politicization of reactions to the kidnapping of women anger Libyans. RACIF 22.

https://bit.ly/3mmhcOU

<sup>72</sup> Many reports confirmed that sexual assault and rape are tools of torture inside Libyan prisons, and that it affects men and women alike.

In The Guardian: "Rape of men is used regularly" during the war in Libya. BBC. Nov. 2017 https://bbc.in/3e2cVx1

act is accompanied by a special criminal intent, which is the intention to defeat the enemy and win the battle by pleading with this immoral act, or in terms of the inappropriateness of the punishment and its proportionality to the gravity of the crime. It does not exceed ten years imprisonment except under severe circumstances. The commission of an act in wartime is not among them"<sup>(73)</sup>.

In our opinion, a distinction must be made between rape and sexual violence during war and armed conflicts that take place individually and those that take place collectively or are based on incitement committed by a person with authority over the perpetrator of rape or coerced sexual relations, or collectively and based on incitement. The punishment for both offenses should be harsher. However, the punishment for the second crime should be made more severe, and the punishment for the instigator should be increased to the maximum extent possible. International human rights law and international humanitarian law criminalize rape and all forms of sexual violence. Such behaviour and actions may entail individual criminal liability for war crimes.

Violence and assaulted against women have left a tragic effect that is difficult to quantify. The majority of women who were assaulted experienced extended psychological trauma. Many of them were forced to leave their studies and jobs, which they depended on for their livelihood and the sustenance of their families. Most of the women who suffered these violations did not have access to psychological rehabilitation services due to the worsening deterioration of the health sector, which as previously mentioned has been in a poor state for forty-two years. The deterioration of the health system increased and the gap in services, equipment, technical knowledge and scientific research widened. As soon as the armed conflict erupted, foreign medical personnel began leaving the country including doctors, nurses, and technicians. Sometimes, some Libyan nurses have had to supervise the hospitals on their own until a doctor is brought in to replace the doctors who left the country.

<sup>73</sup> Shaitir. Victims of sexual violence and protection mechanisms in Libya. Legal Notebook. 2017.

During an interview with Mrs. Aisha Al-Bakoush, <sup>(74)</sup> the senior nurse at the Nursing Center in Sebha, she stated that she had to endanger her life while performing her work in the hospital when an armed group surrounded the hospital and threatened to storm the building. To protect the dozens of wounded who were receiving treatment in the hospital, Al-Bakoush was prompted to use mediation efforts in order to negotiate with the armed group not to storm the hospital and not to transfer the battle between its walls. Al-Bakoush's efforts were successful after her life was threatened during her shift. Aisha Al-Bakoush is not an exception. Many female workers in the health sector are exposed to danger during their work, and this has pushed many of them to leave, which has further affected the health sector negatively.

The majority of the assaulted women refused to submit legal reports for redress, and the official authorities did not initiate serious investigations in this regard. Among the factors that convinced women not to report their attacks were the fear of embarrassment and social stigma, and the difficulty and cost of navigating the cases. The difficulty of conducting judicial procedures is due to a number of reasons, including the suspension of many courts and the suspension of a number of judges from work, as well as a lack of familiarity with the procedures and the high cost of assigning a lawyer.

The state dealt with the files of women who were assaulted and related investigations slowly and with great overload. Most of those responsible for the violations were not identified or held accountable, resulting in a lack of domestic justice in most violations.

Despite the availability of resources, the official authorities have not allocated sufficient resources to the health sectors specialized in treating women who have been subjected to violence, and necessary resources for the health system in general, which breaches the principle of States obligation to implement the right by allocating the maximum of their available resources. Since the beginning of the transitional period, and despite the fact that financial resources were available and sufficient, official

<sup>74</sup> An in-depth interview with Aisha Al-Bakoush, Head of the Nursing Authority in Sebha, who has many contributions to the field of mediation and amicable dispute settlement January 22, 2020.

authorities refrained from granting the health sector the necessary budgets to lift it from its current state of prolonged deterioration. This happened at a time when the General National Congress took a strategic decision to grant extremely large sums of money to armed groups. Some justify this measure by saying that it was motivated by pressure from armed groups. Others justified it by saying that it came as part of a policy of reintegrating armed groups and stimulating their involvement in state institutions, but instead what happened was that this measure contributed to the increase in the intensity of armed conflicts. Also, allocating adequate budgets to the health sector would have contributed to mitigating conflicts.

The measures taken by the official authorities with regard to their handling of the issue of violence against women and with the health system in general - have been characterized as circumstantial, volatile and subject to pressure, and the state of the health system in 2020 is worse than in 2011, which indicates that these measures are going against the principle of the obligation of states. Many of these measures were taken under pressure and claims, and the government tried to avoid dealing with the issue of violence against women. The government did not respond to many of the demands related to the female victims without pressure, and still measures it has taken do not reflect a gradual rise in the effective enjoyment of rights.

On a larger scale, formal authorities have ignored a plan to remove the effects of retrogressive, derogatory measures taken by the autocracy. The concept that states should avoid regressive and derogatory measures is implicit in the concept of states obligation to provide the maximum available range of resources for the progressive realization of the protection of economic, social and cultural rights. What is established in international human rights jurisprudence is that in the event of retrogressive measures, then these measures must (first) be unintentional. Regressive and derogatory measures must also be justified; (Ii) That this takes place in the context of utilizing all available resources; (Iii) To be immediately followed by corrective measures.

<sup>75</sup> Regressive / retrogressive measures are those that lead, directly or indirectly, to taking steps that entail a reversal of the achievements made in relation to the protection of rights recognized by the International Covenant on Economic, Social and Cultural Rights.

In all cases, the retrogressive measures cannot be taken or applied in a discriminatory manner, either directly or indirectly, or formally or fundamentally. An example of deliberate regressive and derogatory measures is the promulgation of a new law-making primary education voluntary rather than compulsory. Another example is the reduction in maternal health care expenditures, which will cause an increase in maternal and infant mortality rates.

The retrogressive, regressive measures taken by the autocracy are enormous, and the gravity of their current effects is clear. The spillover of its repercussions and negative effects is clear. However, the behaviour of the official authorities during the transitional phase indicates that there is insufficient awareness that the link is closely related between the transitional phase and the stage of the autocracy. The behaviour of some parties indicates that they believe that the Libyan nation is starting from scratch.

In addition, the phenomenon of citizens compelled to travel abroad for treatment expanded after the official authorities deprived the health sector of UN technical expertise and did not submit a comprehensive plan to request external technical assistance, which is considered a violation of the principle of the obligation to seek external assistance. (76) Crowds of citizens were forced to travel to Egypt, Tunisia, Jordan and Turkey and the majority travelled at their own expense, with the rest traveling at the state's expense. The official authorities today, as they were in the past, do not need financial assistance. Rather, they need technical medical assistance at all levels. It is worth noting that during the transitional period, there were initiatives and efforts from the UN agencies in Libya, and cooperation with civil society, regardless of coordination with the official authorities. This includes United Nations organizations such as the World Health Organization and UNICEF in addition to others such as Oxfam and the Red Cross. It is also worth noting that since the beginning of the transitional phase, the door has opened for official authorities to interact and cooperate with specialized

<sup>76</sup> Economic and social rights. Handbook of National Human Rights Institutions. P. 17.

UN institutions and organizations. Some degree of cooperation has happened; however, this cooperation is circumstantial and does not express the existence of a strategy for seeking assistance.

The legislative movement was characterized by insufficiency and weakness, with its failure to provide the necessary protection for women in the face of violence, and the failure to provide access to justice and adequate redress. During the period between 2011 and 2013, the Executive and Legislative Authority (the General National Congress) did not rush to pass strict and deterrent legislation or take temporary measures. At the beginning of 2013, the official body began to move, but its movement was slow, weak and hesitant, and did not reach a minimum. The Minister of Justice proposed a law for violence and rape victims. (77) However, the General National Congress, in its capacity as the legislative body, rejected the draft law on the grounds that it contravenes the social traditions that require concealment of such issues in order to avoid embarrassment and stigmatization. The Cabinet merely approved the draft law in the form of Cabinet Resolution No. 119 of 2014 regarding dealing with the situation of victims of sexual violence. The Minister of Justice also issued a decision to organize the Fund for the Treatment of Situations of Sexual Violence<sup>(78)</sup> under the Ministry of Justice, to become later affiliated with the Ministry of Social Affairs. The Ministry of Justice was the first to contribute to the fund.

In terms of redress, the vast majority of women have not had access to an external court. There is also no accurate statistic on the number of women who have attempted to take legal action to obtain redress on the basis of international legal frameworks to redress violations of conflict-related sexual violence and violence against women during the transitional period.

<sup>77</sup> Shaitir. Victims of sexual violence and protection mechanisms in Libya. Legal Notebook. 4 April 2017.

<sup>78</sup> Article 5 of Resolution No. 904 of 2014 regulating the Fund for the Treatment of Situations of Sexual Violence.

## 3- Violations against women political leaders and women's rights defenders

From an early age during the transitional period, a wave of targeting women leaders participating in political life began, including murder and kidnapping. As mentioned in the beginning, women and young women made significant contributions to the uprising and following protests.. Even after the fall of the autonomous system, they made a broad contribution to educating society on the level of promoting public participation and inclusion. This is in addition to leading human rights efforts and addressing human rights violations. This wave of targeting began in 2014 and continued into 2019.

On 6/25/2014, Mrs. Salwa Bugaighis, a former member of the Libyan Transitional Council and vice president of the preparatory body for the National Dialogue Conference, was assassinated by unknown gunmen in her home in Benghazi. She is a prominent lawyer and human rights defender at the national and international levels. The assassination took place as soon as she broadcast an encouraging invitation to women and the Libyan community in general via the network to participate in the Parliamentary elections in fulfilment of the duty to participate. Her assassination was accompanied by the kidnapping of her husband, Mr. Essam Al-Ghariani, who is still undergoing enforced disappearance at the time of writing this paper.

On July 17 2014, Mrs. Fariha Al-Barakawi, a member of the General National Congress, was assassinated in the city of Derna.

On February 24 2015, Mrs. Intisar Al-Hasairi, one of the young women leaders who was a co-founder of the Tanweer Movement, was assassinated. The assassination took place in Tripoli. Intisar Al-Hasairi had expressed her condemnation of the armed conflicts and bombings against civilians. The perpetrators left her body in the back of her car, where she was found at dawn on the Tuesday following the assassination.

On 7/17/2019, Mrs. Siham Sergewa was kidnapped from her home in Benghazi after expressing a political position and rejecting the war on Tripoli through the media. She is still under enforced disappearance at the time of writing this paper.

Several strings have gathered indicating that the targeting of women leaders participating in political life, including murder and kidnapping, was simultaneously driven by both political and gender motives. This was confirmed by local and international data, and the failure of the international community to prevent the continued flow of illegal weapons into Libya has contributed to this phenomenon.

All of these incidents were condemned by the United Nations Assistance Mission in Libya in its statements.

The killing of female leaders led to widespread panic and fear among women in general, and among women participating in public and political life, including female leaders. It also led to the withdrawal of some women from public participation and discouraged a large number of women wishing to participate in politics. Although the Libyan authorities declared their commitment to investigate these assassinations, no one has yet been held accountable for these crimes.<sup>(79)</sup>

The failure to initiate serious investigations into most of the aforementioned assassinations has resulted in the failure to obtain redress for the families of the victims, and the perpetrators' impunity. It also contributed to the continuation of the vicious cycle of violence. It led to society and women losing confidence in the official authorities and in the justice system.

The three official legislative, executive and judicial authorities failed to simply study the phenomenon at the level of legislative measures and at the level of policy and methodological measures, in addition to their failure to enact legislation that would contribute to confronting and ending this dangerous phenomenon.

<sup>79</sup> Amnesty International (2018). Silencing the Voices: Attacks on Libyan Women Human Rights Defenders.

Women human rights defenders and activists in the field of women's empowerment have also been subjected to a wave of targeted violations and a wide range of violent practices. The wave of violations began in 2013 and continued until 2020 without stopping. During this period, the targeting of women human rights defenders escalated rapidly and intensely and were subjected to consistent systematic violations in all major cities in Libya. The series of targeted attacks included countless violations including slander, insult, verbal abuse, sexual harassment, defamation, fabrication of false narratives, extortion, and threats. (80) The attacks and violations even went as far as arrest, interrogation, raiding public discussion panels and meeting places without inspection warrants from the prosecution, breaking up meetings, and sexual violence. Amnesty International clarified in a statement that:

"Libyan women activists, bloggers and journalists are being increasingly silenced due to their exposure to gender-based violence, sometimes through physical violence, and at other times through abduction and sexual violence. Despite the Libyan authorities' repeated statements that they are committed to respecting human rights, in reality they are failing to provide protection for women from the kinds of violence perpetrated against them by militias and armed groups because of their gender, and to ensure that they are able to express themselves freely. ..." The Amnesty research demonstrates the international community's statement that women who dare to speak out against corruption or against the attacks of militias or the Libyan National Army face special risks related to their gender, including exposure to sexual violence. (81)

A package of evidence was available that identifies those responsible for the violations, and it turned out to be a group of different parties who each had a clear interest in silencing defenders of women's human rights. The analysis of the texts and the language of the discourse used, as well as the systematic

<sup>80</sup> Report of the United Nations High Commissioner for Human Rights on the human rights situation in Libya and on the related needs for technical support and capacity building. (2015). January 12. P. 6.

https://www.ohchr.org/EN/Countries/MENARegion/Pages/LYIndex.aspx

<sup>81</sup> Amnesty International (2018). Previous source.

nature and intensity of the violations, all indicated a clear and direct signal that behind these violations are armed groups with extremist political and ideological tendencies, as well as being affiliated with the Libyan National Army and various official authorities. At times, these violations involved declaring or branding the perpetrators. This was overwhelming evidence that the perpetrators of the violations are safe from punishment, and that they underestimate the customs and traditions that prohibit moral and material harm to women.

Several evidences indicated that the targeting of female leaders participating in political life, including murder and kidnapping, was motivated by political and sexual motives at the same time. Armed groups and official authorities that practiced violations sought to silence voices critical of these groups' power, their moral and financial corruption, and the proliferation of illegal weapons. The human rights efforts focused on uncovering the circumstances of human rights crimes committed and those responsible were ignored, confronting the law-breaking operations and avoiding accountability and impunity. This evidence included portions of textual material sent to the activists to intimidate them.

The aforementioned violations included violations of several articles contained in the international legal frameworks to which Libya joined. The aforementioned violations are exemplified in terms of their failure to provide the necessary protection for women - from gender-based violence, lack of redress for them through the judiciary, and failure to provide protection for women's rights defenders and activists. Discrimination on the basis of sex with respect to equal protection is also in violation of Article 26 of the International Covenant on Civil and Political Rights, which prohibits discrimination. The actions and the arbitrary arrests and detentions they entailed violate the right to liberty and security of person and violate Article 9 of the International Covenant on Civil and Political Rights. In addition, torture and all forms of ill-treatment are in direct violation of paragraph 2 and paragraph 7 of the International Covenant on Civil and Political Rights and the Committee against Torture. Obstructing the meetings is also a violation of the decisions of Article 19 and Article 21 of the International Covenant on Civil and Political Rights, which safeguarded fundamental

freedoms, especially the right to freedom of expression and assembly. These acts also amount to violations of international humanitarian law 1029; as they involve violations of paragraph 3 of the Geneva Conventions, and Article 4 of Additional Protocol II in particular. Those who carry it will be held criminally accountable for war crimes, including forced sexual relations, rape and other forms of conflict-related sexual violence, torture, cruel or inhuman treatment, and attacks on personal dignity and hostage-taking.

The violations had devastating effects on several levels. Some women human rights defenders and activists have been stressed and traumatized. A number of young women and women who wanted to develop initiatives and make community efforts refused to do so, with a general feeling of fear and sense of injustice looming among women in Libya. Some women human rights defenders have been subjected to family pressure. As a result, some of them were forced to reduce their efforts in order to preserve their security. Some women have had to move away from public affairs altogether, migrate or change their place of residence. This has led to a slowdown in the overall advocacy movement, the awareness and empowerment of women, their decline, and the decline in the services they provide to society and women. In addition, the targeting of women's human rights defenders has led to a decline in women's efforts in mediation, conciliation, conflict resolution and peacebuilding. It is known that women in Libya have launched very important and effective initiatives to mediate at the local level. (82) The targeting of women has also had a negative effect on human rights work in general, even among the circles of organizations led by men.

We should note that the wave of violence against women's rights defenders has not been met with a movement to take remedial measures, except in a few cases. The majority of women refused to take legal measures before the Libyan Attorney General's office or before the UN judiciary bodies or committees with the authority to look into such violations. Women also refrained from submitting complaints to those representing a customary social authority, such as tribal sheikhs, leaders of prominent families,

<sup>82</sup> Zahra' Langhi (2018). Charting the way forward for local women mediators in Libya. Great Horizons.

and other notable members of society. In most cases, the reluctance to take remedial measures arose due to factors including fear of social embarrassment, stigmatization, fear of exposure to more risks and violence, and the weakness of the local judiciary. Factors also included the difficulty of initiating and following up on lawsuits before the local judiciary, their high material and moral cost, the lack of technical knowledge required for a collective remedy before the UN judicial authorities, and the lack of coordination and unity of the human rights position. This resulted in a lack of redress for most violations of women's rights. Some of the defenders have been limited to writing about the phenomenon or talking about it in the media. As an exception, Majdoleen Abida filed a single case pursuant to Article 2 of the Optional Protocol of the CEDAW Committee (Libya) 2017 against the Libyan state. She is a survivor of conflict-related violence. The defendant is an armed group named February 17 that was affiliated with the Libyan Chief of Staff. (83) However, the Libyan authorities did not respond to her case.

Official authorities failed to stop these violations through protective measures, punitive measures, or legislative measures. All of these actions are criminalized in Libyan law. But the criminal legislative structure is not integrated, and there are legislative vacuums and gaps. Official authorities have failed to reform this legislative structure. For example, the official authorities have not issued comprehensive legislation criminalizing the misuse of communications tools, as is the case in other countries, including Egypt. In the countries where such legislation was issued, its promulgation contributed to reducing the targeting of women and human rights defenders. Without this, the official authorities were unable to even launch media

<sup>83</sup> https://redress.org. Libya signed the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in 18 of June 2004.

Article 2 Communications

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

campaigns to raise awareness of ethics and behaviour. In short, although women have been able to break many obstacles and participate in public life and at the level of political representation, they have not received the minimum legislative, policy and procedural protection.

#### 4- Violations related to women's right to education

During the transitional period, women's and girls' right to education was severely violated. The explosive remnants of war and mines, along with the exposure of schools to indiscriminate shelling constituted a major obstacle to the right of access to education. Several international human rights reports monitored violations of the right to education for girls due to the armed conflict. In 2013, there were separate reports of improvised explosive devices placed in or near 1038 schools and the kidnapping of girls by armed men. (84) According to the Office of the High Commissioner for Human Rights, in some areas that were controlled by Ansar al-Sharia in both Benghazi and Derna in 2015, parents were afraid to send their daughters to school for fear of being kidnapped. UNHCR has also obtained reports from Tripoli of girls being kidnapped and harassed while going to school. (85) The United Nations Mission in Libya and the High Commissioner for Human Rights also monitored many schools that were destroyed in 2014 as a result of bombing, which affected the right to access education. Schools were also monitored in both Benghazi and Tripoli, with many closing and transforming into shelters. Armed groups in Warshafana and Nafusa also seized a number of schools and used them as military facilities. (86)

During the confrontations that took place between armed groups and the Arab armed forces in 2014-2017, the education movement in schools and universities was suspended in Benghazi, and a number of schools were converted into shelters for the displaced. According to the report of the Five-Year Review of Implementation of the Beijing Declaration and Platform for

<sup>84</sup> Global Coalition to Protect Education from Attack. Education Under Attack 2014. P.157. https://bit.ly/3kdW1hn

<sup>85</sup> Global Coalition to Protect Education from Attack. Education Under Attack 2018. P.165. https://bit.ly/3dGogTj

<sup>86</sup> https://www.ohchr.org/AR/Countries/MENARegion/Pages/LYIndex.aspx (in Arabic)

Action, "The deprivation rate of students in primary and secondary schools of basic facilities has increased". According to the school water quality assessments formulated by UNICEF LCO in 2017, the National Center for Disease Control (NCDC) and the Ministry of Education - 67 percent of the schools surveyed (140 schools) have limited access to drinking water supplies and 95.8 percent have limited access to sanitation services, while 4.2 percent do not have any sanitation services. The average number of students to a practical toilet is 71 students, while the Ministry of Education standards is one toilet for every 25 students. (87)

The infrastructure of the premises of educational institutions and training has deteriorated, as the buildings have not been adequately maintained. During 2017 and 2018, a number of students aged 7-10 years were killed as a result of the detonation of mines planted by armed groups during the conflict that took place in the city of Benghazi. (88)

Killings and injuries caused by detonation of mines spared no one. It affects children, boys and girls, men and women alike. The injuries of girls and women were severe and included permanent disabilities as well as loss of limbs. Most of the injured girls and women did not receive adequate medical service due to the deterioration of the hospitals. The school dropout rate has risen dramatically due to the lack of mine clearance, and official authorities have not provided adequate resources for mine clearance for a long time. Local authorities and civil society organizations (scouts) cleared mines in extremely dangerous and rudimentary ways. Also, UN agencies failed to guarantee mine aid. It is worth noting that the same scene was repeated in 2020 after the end of the war in Tripoli. (89)

On the other hand, the movement of legislation in the field of education was generally characterized by weakness. Specifically, there is a legislative vacuum regarding "binding legislation to integrate trainees with special needs in TVET institutions".

<sup>87</sup> See Libyan National Report, Beijing + 25, 2019. p. 21.

<sup>88</sup> https://bit.ly/2INKxDm

<sup>89</sup> https://bit.ly/3ke3Of7

#### 5- Violations suffered by migrant women

A weak law enforcement authority has turned Libya into a popular transition country for irregular migration, and this has resulted in migrant women and girls being subjected to various violations and being detained arbitrarily. The category of migrant women includes various age and social groups, including girls, young women, married and unmarried women, breadwinners and non-breadwinners. According to an Oxfam report in 2017, migrant women interviewed determined that they had been kidnapped by gangs who held them in closed guarded locations. The women were subjected to detention without official charge or legal process. They were not charged for long periods and they did not take appropriate measures to regularize their situation for long periods of time, as a minimum of a few months. They did not receive sufficient technical or legal assistance, especially regarding providing legal documents that prove their identity and enable them to move. This arbitrary detention entails a direct deprivation of liberty based on discrimination based on origin, nationality, and race. It is known that arbitrary detention is in violation of Article 9 and Article 14 of the International Covenant on Civil and Political Rights, and this was explained by the General Comment of the Human Rights Committee No. 35/2011 on the freedom and safety of persons. During prolonged detention, women and girls have also been subjected to rape, forced labour and cruel and degrading treatment that undermines human dignity. It has been observed that the places where migrant women were held were not suitable for human accommodation. These places are very cramped, with large numbers of people placed in small rooms. Women in these detention centres endured extremely harsh health conditions, including being kept for long periods without adequate food, bathing, healthcare or toilets. Many migrant women were killed<sup>(90)</sup>, and according to an April 2017 statement by the International Organization for Migration, male and female migrants were also offered for sale as slaves. (91) According to international human rights law and international humanitarian law, torture and all forms of cruel

<sup>90</sup> https://bit.ly/35tPCZi

<sup>91</sup> IOM Learns of 'Slave Market' Conditions Endangering Migrants in North Africa. April 2017. https://bit.ly/3koa3Na

treatment or inhumane or degrading treatment are prohibited. International human rights law and international humanitarian law also criminalize rape and all forms of sexual violence, and such behaviour and actions may entail individual criminal liability for war crimes. It is worth noting that Libya has not ratified the 1951 Convention relating to the Status of Refugees, however, the Libyan state is still obligated to provide protection for refugees.

Much evidence was gathered that led to the identification of some of those responsible for the abduction of migrant women and the violations they suffered. International transnational and locally organized crime frameworks have practiced the abduction and trafficking of migrant women on a large scale. Militias also deliberately exploited migrant women physically and financially, as trade in migrants represented a source of income for these militias within the context of the war economy that arose and expanded. A number of workers in some official institutions were also involved in this, with all of these parties coming together to target migrant women, to exploit them economically, physically, and to enslave them.

The phenomenon of violating the rights of migrant women based on gender and racism has been exacerbated, causing severe harm to women. Many migrant women have suffered from trauma and mental illness as a result of the violations they have experienced. The rape of several kidnapped migrant women has resulted in forced pregnancies, and pregnant migrant women find themselves doubly aggravated by exposure to humiliating detention and simultaneous pregnancy. Under the weight of fear of kidnapping or the continuation of the hell of detention, migrant women made choices that entailed existential risks, such as making agreements with those responsible for smuggling people across the Mediterranean, riding boats that lacked the minimum security and safety means, and sailing in dangerous conditions. This has led to the drowning of thousands of migrant women. (93)

<sup>92</sup> Oxfam. Previous source.

<sup>93</sup> Amnesty International (2015). Libya: Free migrants and refugees trapped in detention centers amid escalating clashes. April 15.

On another level, the official authority has taken in a number of immigrant women and detained them in official centres in the context of trying to confront, stop and organize illegal immigration. However, the implementation of this was subject to international criticism, and the state was criticized for not issuing legislation that could provide the necessary protection for migrant women. The official authority has established shelters for immigrants and in April 2019, more than 700 refugees and migrants were suspended in Libya and held in a detention centre in the town of Qasr Bin Ghashir, in Tripoli. (94)

Official authorities tried to coordinate the provision of services to migrant women, including health services. However, some workers in these centres did not receive the necessary training and did not have the necessary technical knowledge. Organized crime frameworks also sought to infiltrate these migrant shelters to kidnap some of them. There were also testimonies that migrant women were subjected to discrimination and violence during their detention in shelters. The OHCHR report says:

In the first half of 2014, UNAMI / OHCHR visited various immigration detention centers, including centers in Abu Salim, Al Zawiyah, Al Tawisha, Al Hamra, Al Khums, Al Jawiya, Abu Rashadah, Al Qatrun, Surman, the Zoo Center and Zlitan. UNAMI / UNHCR identified conditions of grave concern, including chronic overcrowding, poor sanitation and health care facilities, and insufficient food. There are also consistent reports of physical or verbal abuse and exploitation at work, sexual assault, extortion, confiscation of identity documents, and detention of minors with adults. (95)

As a result, a number of UN human rights parties submitted demands to the Libyan authorities to end their detention. The Libyan authorities also established the deterrence apparatus to combat organized crime and terrorism according to Decision No. 555 of 2018 by the Presidency Council of the Government of National Accord. Some saw the existence of the device as necessary, and that it contributes to confronting organized crime targeting migrants and immigrants. On the other hand, others demanded

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

the necessity to amend the powers granted to the agency on the basis that they constitute a violation of the constitutional declaration, Libyan laws, and international human rights law. (96) The state has not passed legislation that clearly criminalizes the violations that migrant women have been subjected to and does not provide deterrent penalties.

We should note that migrant women did not initiate legal communications before the Libyan Public Prosecution Office for redress. They also did not try to obtain an individual or collective remedy before the UN judiciary bodies or those with the authority to consider such violations. Often this reluctance came from many considerations, including the fear of exposing their human security to more existential risks and violence at the hands of the perpetrators of violations, and the weakness of the local judiciary. Furthermore, considerations that made migrant women reluctance to report violations included the difficulty of opening and following up lawsuits with the local judiciary, and the high financial and moral cost of that. These considerations also included the lack of technical knowledge necessary for a collective remedy before the UN judicial authorities, and the lack of coordination and unity of the human rights position among them. This resulted in a lack of redress for most violations. In light of these difficulties, some of the displaced women confined themselves to submitting testimonies to human rights organizations and the media, hoping someone will conduct investigations into these violations.

### Violations related to the institutional empowerment of women

Although during the transitional period, new official bodies were established with the aim of strengthening the status of women in relation to work and women's legislation, the entirety of the legislative and policy measures taken by the official authorities have included flagrant violations of the concept of the obligation of states to implement the right by allocating the maximum of their available resources. The Women's Support and Empowerment Unit was established in the Presidency Council of the

<sup>96</sup> Libya News. The Human Rights Solidarity Organization calls for the cancellation of the decision to establish the deterrence apparatus

Government of National Accord to play the role of the National Woman Machinery in accordance with the concept of the Beijing Declaration and Platform for Action for the term. The unit was established according to Article 11 of the Political Agreement and made it subordinate to the Prime Minister. The establishment of this unit represented a consolidation of the official decision regarding women's affairs and gender equality. According to the unit head, the management was late in allocating the budget for the unit. This is in addition to the presence of other official institutions that contribute to supporting women's issues in Libya, whose presence on the one hand reflects the interest of the Libyan decision to empower women and work towards gender equality. These are the Ministry of Social Affairs in the Government of National Accord, the Ministry of State for Women Affairs and Community Development in the Government of National Accord, and on the other hand, they constitute an overlap and a conflict of powers, which is what the Beijing Platform for Action warned against. It is not clear who is responsible for preparing national reports such as CEDAW and Beijing, and who officially represents the country before international organizations. A woman has also been appointed Minister of State for Enterprise Structuring Affairs. The goals of the appointment include that the policies and procedures that the Minister sets for institutions seek to achieve gender equality and the empowerment of women in those institutions. It has also been noted that the resources available for these entities are modest. The lack of resources allocated to implement plans and tasks that promote gender equality and women's empowerment has slowed or suspended several plans.

### 6- Violations related to women's participation in the labour market

It is common in studies on women's work in Libya and related legislation to point out the strange phenomenon that while the rate of female graduates exceeds the rate of male graduates, there is a large deficit in the number of females in the formal labour market. In its September 2013 report, the International Foundation for Electoral Systems stated that:

The majority of university graduates in the country are women, and 77 percent of women continue their studies within the framework of higher education, compared to 63 percent of men. (97)

At the same time, the rate of female participation in the workforce in Libya ranges between 30 percent and 40 percent. According to the OECD results in 2017, the female labour force participation rate was 39.3% compared to an average of 74% in OECD countries. In other words, there is a huge disparity between women's educational attainment and their economic participation. It should be noted that low economic participation is a feature that is shared by six countries in the MENA region. The economic participation rate of women is lower than the global average of 47.1%. (99)

The state remains the main employer in Libya. The level of employment in the public sector is among the highest in the world. The public sector absorbs 70% of the formal workforce. (100) Currently, there is a significant increase in employment in the sectors and companies dominated by the state. (101)

The majority of working women work in the public sector. They are largely concentrated in a small number of sectors, with the following coming out on top of the list: the public administration sector, the education sector, the health care sector, the social security sector, and the agriculture sector. Other work areas in which women are concentrated include administrative and office work in banks, stores, government offices, and domestic service. Light industries, especially domestic economic activities, provide another means for female employment. (103)

<sup>97</sup> Sarhan, 2014

<sup>98</sup> OECD, 2017. p. 28.

<sup>99</sup> OECD, 2017. p. 26.

<sup>100</sup> Abuhadra and Ajaali. 2014. p. 15.

<sup>101</sup> Abuhadra and Ajaali. 2014. p. 12.

<sup>102</sup> Bughaighis and Tantush, 2017. p. 18.

<sup>103</sup> Abuhadra and Ajaali. 2014. p. 9

Another strange phenomenon that attracts attention is that the size of the private sector is extremely small. As we mentioned at the beginning, the smallness of the private sector is the culmination of its decline over more than a century, due to four consecutive factors. From around 1900 to 1951, the private sector declined mainly due to a failure to respond to the challenges brought about by the wave of modernization, as well as due to colonial oppression. Between 1951 and 1969, with the establishment of the state and its bureaucracy, the private sector retreated mainly as a result of the administration adopting the approach of leading the nation unilaterally, including leading the workforce, and providing them with social security services. Between 1969 and 2011, the private sector declined mainly due to the repression of authoritarianism.

The third negative phenomenon is that the number of women working in the private sector is very small. We have previously mentioned that, starting with the establishment of the state of independence, very few Libyan women are venturing into entrepreneurship in its modern form.

Employment is the main contributor to gender inequality and deprivation in Libya during the conflict phase, a finding supported by the numbers. In 2016, Libya was classified as having "the second highest unemployment rate in the world, which was 19% from 2012 to 2014 after it was 13% in 2010, noting that the rate for Libyan youth (aged between 15 and 25 years) is much higher, at 48%, as is the case for women, at 25%. About 30% of companies have stated that there is a difficulty in finding adequately qualified Libyan citizens.<sup>(104)</sup>

Libyan women are deprived in the labour markets of the public and private sectors. The vast majority of vacancies are for men. The few women working for the state and the private sector earn less income in performing the same job duties. (105) However, there is a lack of public awareness regarding the

<sup>104</sup> World Bank. (2016). Public-Private Partnerships for Jobs in Libya Are Key for Youth and Women, Now More Than Ever. May 3. No page. https://bit.ly/3fD8lX2

<sup>105</sup> The results of focus groups (workshops with specialized groups) in each of Benghazi, Sabha, and Tripoli - showed that "the main factors hindering women's access to promotion are the male perception of Libyan society, gender discrimination between male and female employees in the workplace, and the requirements of work in some areas of freedom Transportation, travel and field

sharp decline in women's economic participation. In a survey conducted by one of the civil society organizations - Women and Work - it was found that 43% of males believe that Libyan women do not experience discrimination in getting a job, and 14% of women said they have more opportunities than men. Also, 14% of males said that women "do not take their rights because of society's view of working women." (106)

In some cities and neighbourhoods that were controlled by extremist groups, a number of women were forced not to go to the workplace. As a result, and the security situation continues to deteriorate, some women have lost their jobs, on which they depended for their livelihood and the sustenance of their families. And in places where the existence of armed groups has ended, some women who have left their jobs have not been able to regain them. The executive and legislative authorities have not taken the initiative to develop the basis for legislation related to women to issue laws that contain more deterrent penalties, and laws that criminalize what is not already locally criminal of these acts.

• When evaluating the state's legislative behaviour regarding the violation of the right of women to participate fully in economic life, it is not correct to justify the low participation of women on the pretext that this comes as a reflection of the concept of the progressive realization of rights and their

work. Promotion also depends on the professionalism of the workplace and the extent of adherence to laws and regulations, and whether the sector is governmental or private, as promotion in the government sector is based on intermediary social relations, the tribe. Sexual discrimination also plays a major role in promotion, and this is due to the nature of Libyan society where relations between males and females are characterized by conservatism and lack of smooth treatment. Moreover, most women do not benefit from career development opportunities due to the difficulty of moving, either due to family ties or social cultural determinants that do not allow women to move or travel without an escort. This is also one of the main reasons that limit or impede career advancement or promotion and one of the important reasons why managers prefer to promote men because they are free from such social restrictions. Also, despite the existence of training, but it is not very high in terms of quality, due to the absence of a culture of skills development. However, it was also noted that women who lack the opportunity for career development within the workplace for reasons that were social, compensate for their development by engaging in the academic aspect of studies or developing their skills through self-effort via the Internet.

<sup>106</sup> Here is Libya. Pp. 1, 2, 2018.

gradual application. It is well known that some rights by their very nature are associated with the rule of gradual implementation. But the right of women to participate in economic life, especially work, should be realized immediately. This is because work is crucial for individuals and families in that it is a means of obtaining livelihood and providing daily sustenance. The right to non-discrimination in relation to participation in economic life and work should be realized immediately. Does the term "progressive" mean that the country must reach a certain level of political or economic development? The answer is no. This commitment is not dependent on an increase in the available resources, regardless of the size of the country's wealth. This is according to the Limburg Principles, which affirms that states must strive to fulfil the rights as quickly as possible. The text may not be interpreted as meaning the matter to be postponed indefinitely. Some countries use this text as an excuse not to take prompt action or as an excuse to violate it. This does not affect the legal nature of rights, nor does it imply that the covenant is free of concrete obligations that must be fulfilled immediately. There is a need to educate local officials on the true meaning of the text. Economic or social rights that cannot be fully guaranteed should be guaranteed to the maximum extent possible.

Moreover, following the start of the transitional phase, while large segments of women have increased their willingness to join the labour market in the public and private sector, some women have been exposed to a wave of work-related violations such as harassment, and the legislative movement has not kept pace with that to provide women with the necessary protection. In a phase in which official and societal oversight in general has diminished as a result of conflicts and security deterioration, many entities lacked a favourable institutional climate that encourages women to continue working and keep a job. Indirect verbal and sometimes direct abuse, and harassment in various forms has also spread. (107)

<sup>107</sup> In March 2019, the United Nations Support Mission in Libya issued a statement condemning the sexual harassment practiced against female workers in banks and against female clients in Tripoli. The statement emphasized that the phenomenon resulted from the absence of a deterrent law. The mission stated in a tweet on Twitter that it condemns "the harassment of bank employees and women clients in the tourist area of Tripoli and is working to support the political and security authorities to put an end to this criminal behaviour."

As a result, a number of women left their jobs, and many of them were reluctant to join institutions and companies. This has also led families to pressure women to leave their jobs or not to join an institution or company. As noted, the labour Relations Act prohibits workers, employers, or clients from sexual harassment or incitement to it. If sexual harassment or inappropriate behaviour is proven, the employee may be punished by dismissal from work. The majority of women refrained from submitting legal communications for redress for many considerations, including fear of embarrassment and social stigmatization, fear of exposing the family, extended family, or tribe to embarrassment, fear of exposure to family problems with the father or husband (that may lead to divorce) or even children, and perhaps a weak judiciary, and a lack of awareness of their legal and judicial rights, and the difficult and costly cost of the cases, and poverty. However, the relevant legislative base is very broad. (108) "Tools available in other countries to combat sexual harassment are not available in Libya."(109) In any work environment, some employees derive from the absence of detailed corporate governance codes and ethical codes of conduct that it is possible to commit and turn away from sex-related violations. It is not enough to have a few articles in the criminal law, especially since with regard to issues of sexual harassment, Libyan society has little recourse to litigation. In this regard, the movement of legislation should issue new laws that contain more detail and entail more deterrent penalties. Legislation should also issue laws that oblige every institution and company in the public and private sectors to issue an institutional governance charter and ethical codes of conduct that take into account gender differences. Often, working women may be more willing to file a complaint within the company, rather than taking a case to court. Experience in other countries has shown that having a corporate governance charter and strict codes of conduct within

<sup>108</sup> According to the results of focus groups in Sebha, Misurata and Tripoli (February 2020), there is harassment in the workplace that takes different forms, often verbal harassment. Although there are lists, cameras and an office to receive complaints of harassment in some workplaces, but this does not constitute sufficient protection For women, the female employee usually does not report out of fear for her reputation and the reputation of her family or losing a job, she does not report because of her lack of confidence in the security services at the workplace, as the security personnel are accused of harassment themselves.

<sup>109</sup> FPSC /READI 2016.

the company or institution and educating employees about its provisions is indispensable for protecting women, ensuring gender equality, and creating a favourable corporate climate. (110)

There appears to be a realization within official circles that there is still a lot to do to conduct legislative reform to make the legislative base more detailed, integrated and more gender-equal, and there is serious pressure especially by civil society to develop the legislative base in some way. For example, in its testimonies contained in the report of the Five-Year Review of Implementation of the Beijing Declaration and Platform for Action, the Ministry of Labour and Rehabilitation implicitly acknowledged that there is a need for further reform of labour laws in order to achieve higher degrees of gender mainstreaming, equity and sensitivity. (111)

Activist women also called for the inclusion of new articles in the penal code that stipulate appropriate penalties for various gender-based crimes, including domestic violence, violence in the workplace, and harassment. However, it should be recognized that many departments within the public sector lack the necessary technical knowledge to strengthen the legislative base to make it more gender equal. Hence, there is a need for training in legislative reform.

<sup>110</sup> The focus group summaries in Benghazi, Tripoli, and Misrata agreed that there is harassment in the workplace, which takes different forms, often in terms of verbal and verbal harassment. Although there are regulations, cameras and offices to receive complaints of harassment in some workplaces, it does not constitute adequate protection for women. "The employee usually does not report out of fear for her reputation and the reputation of her family or losing the job. She also does not report because of her lack of confidence in the security services at the workplace, as the security personnel are accused of harassment themselves."

<sup>111</sup> See the Libyan National Report, Beijing + 25, 2019. pp. 16-17.

#### Part Three: Prospects and Recommendations for Future Legislation Movement Affecting Women

Following the fall of autocracy and the return of a measure of freedom, was the emergence of a body of experts and activists specialized in women's issues, which should lead to a positive impact on the status of women and women's legislation. The official authorities have so far failed in carrying out a comprehensive reform process for the legislative and legal system; however, an important advantage of this stage is the increase in human rights awareness and the emergence of human rights dedicated women activists who address women's rights. During this transitional period, these women exerted pressure on official authorities to issue some positive legislation. This new Libyan body of women rights activists is concerned with women's issues and gender equality, and one of its major characteristics is that it includes people who represent the variety of different identity groups in Libya. This characteristic makes the group more inclusive as they naturally reject the closed regional discourse which has led previous legislation to have discriminatory effects on Libyan society. They interacted extensively and seriously with Libyan women and girls in various cities and towns. Many of the group members established associations and platforms to increase the status of women. Such associations have launched many influential reform initiatives. This expert body of activists and lawyers also interacted with external experts such as the United Nations and its specialized organizations, which increased their interventions in Libya due to the nature of the transitional phase. The Libyan women rights defenders acquired high technical knowledge in this field, in the official sphere and in the community space. A partnership arose between the two sides. They conducted studies and surveys on women's work and women's labour legislation. The issue of women's empowerment and gender equality has become a core issue on the general national legislative agenda. It is no longer possible to ignore women's issues, their empowerment and gender equality, either in the official sector agenda or in the community sector agenda. This achievement came despite the obstacles encountered in the quest for women's empowerment and gender equality. This achievement was due to the sacrifice of women and their steadfastness in facing challenges and obstacles. However, the gaps remain large. The people confronting women's rights must adopt a holistic, qualitative, unbroken understanding of the human rights system.

It is important for any legislative movement aiming to protect economic, social and cultural rights and prevent violations of these rights to adopt a holistic social, economic, cultural and historical approach, and that there is a fit between it and the economic, social and cultural contexts in the country concerned. Therefore, it is imperative to understand the relationship between the movement of legislation and the current socio-economic and cultural reality. It should also seek to benefit from the gains made during the current historical moment and to confront any negatives that emerge from it. At the same time, it must respond to the requirements of the current reality. Hence, the legislation movement should be evaluated and reformed considering its compatibility with the current reality and the extent to which it meets the needs imposed by this reality.

The enactment of favourable and positive legislation does not automatically mean the protection of economic, social and cultural rights. The issuance of "progressive" legislation in isolation from a genuine human rights approach aimed at protecting rights, including the rights of women, is counter-intuitive to the idea of improved legislation. We would like to say that it is incorrect to evaluate the effects of legislative measures numerically or quantitatively, but rather that they should be interpreted qualitatively. The basis of human rights systems must also be understood; whether political and civil, economic, social and cultural, these rights are inalienable, inherent and indivisible, linked by a relationship of unity as each of them depends on the other.

#### **General recommendations**

- Committing the State of Libya to inclusive policies that work towards achieving gender equality.
- Integrating the specific laws on gender equality with the general legislations.
- Ensuring the implementation of legislation related to achieving gender equality and protecting women from violence by establishing mechanisms to follow up and monitor legislation.
- Encouraging parliamentary, partisan and individual initiatives to reform the legislative system, by repealing non-supportive or discriminatory laws and proposing laws that promote gender equality and protect women from violence.

## Sexual abuse of women linked to armed conflict and impunity

- Investigating the factors motivating sexual violations of women related to armed conflict and impunity, and the extent to which a moral environment nurtures these crimes, and work to remove these factors.
- Creating special policies to protect the most vulnerable groups, such as girls, delinquents, displaced women and refugees.
- Establishing operational mechanisms that monitor violations of the rights of women and girls.
- Enacting legislation on sexual violence during war and armed conflicts, and violations that occur individually and collectively.
- Benefit from the constitutional transition and the constitutional amendment taking place in Libya in the constitutional protection of women from sexual violations related to the armed conflict and impunity.
- Protecting women and human rights female defenders.

- Prosecuting those responsible for sexual abuse of women related to the armed conflict and opening an independent, transparent investigation, with an international partnership, into the cases of assassination of female defenders and activists.
- Restoring some protection services that were provided by the State to Libyan women. An example was the hotline service that was available for women to call to report exposure to violence and seek help.
- Promoting data collection periodically on the phenomenon of widespread violence against women and girls, as well as work to protect migrant women and ensure that they receive adequate assistance and protect them from abuse and exploitation and fight human trafficking gangs.

## What the UN political mission should do in relation to sexual abuse of women linked to armed conflict and impunity

- Incorporating sexual violence related to armed conflict into the political process: Including cases of sexual violence related to armed conflict using the power of those with influence in peace agreements and ceasefire operations, as well as defending victims, implementing reforms, supporting commitment to preventing such cases and taking responsibility for them and ensuring that they do not escape punishment.
- Protecting and maintaining international human rights traditions and standards: All parties are obligated at all times to uphold international human rights law, international humanitarian law, international criminal law, customary international law and refugee law.
- Supporting the United Nations mission to the government to acknowledge its responsibilities in prevention and protection. The government (official and executive authorities) are responsible for taking measures to prevent sexual violence and ensuring that cases of sexual violence related to armed conflict, and based on gender, are responded to promptly while adhering to its obligations under international law.

- Supporting the participation, empowerment and protection of women and girls: There must be a comprehensive approach to implementing the decisions and regulations related to women, peace and security, as well as to identify the medical and psychosocial requirements and needs of women, girls, men and boys who are subjected to violations of sexual violence related to armed conflict and based on gender.
- Deployment of Women's Protection Advisors: There is a need for an intense presence of women's protection advisers deployed in the United Nations political mission to support a comprehensive approach to combating sexual violence linked to armed conflict.
- Identifying cases of sexual violence related to armed conflict in addition to other serious violations: Usually, sexual violence related to armed conflict is not committed in isolation from other serious violations of international law, human rights and refugee law, and therefore it must be recognized within a comprehensive assessment.
- Ensuring adherence to professional ethics when reporting by the United Nations political mission: The procedures for monitoring, reporting, documenting and investigating sexual violence related to armed conflicts must be carried out in ethical conditions (i.e. without causing harm) while ensuring the safety of those exposed, their families and communities, and ensuring confidentiality.

## Women, Peace Negotiations and Mediation

- Promoting women's participation in peace negotiations and local and national reconciliations and ensure that women's participation is effective and in all tracks.
- Providing women with equal opportunities in decision-making related to areas of peace and security, including mediation processes.
- Empowering women to play a greater role in different stages of conflict, including prevention, conflict management and post-conflict.

- Involving women in all conflict resolution frameworks, including processes for monitoring and implementing agreements, negotiations, peace processes, diplomatic efforts, and national dialogues. This is provided that the levels in which women are involved include the level of designing the process, defining its terms of reference, the method for selecting the team that manages it, membership of the work team, drafting the mandate issued for it, its paths, and its rounds.
- There is a need to integrate gender in all the terms of political agreements and reconstruction arrangements.
- Ensuring the safe and dignified return of displaced women.

#### **Women and Mediation**

- There is a need to be inspired by women's mediation in the national monarchy era. It is worth noting that the Libyan social legacy is full of important precedents. It is important to discover this legacy, delve into it and examine it with new lenses.
- It is necessary to realize that women's mediation in Libya is rooted in the inherited local structures. Accordingly, it should not be considered as an international Western political product. The time has come to refute the claims that local customs are devoid of women's participation in local reconciliation. These allegations are unfounded.
- History of the participation of Libyan women in local mediation must be investigated and categorized. In this regard, we must recall that women include different groups and do not necessarily all women share the same characteristics.
- There is a need for accurate understanding of women's contribution to conflict resolution through amicable means, including mediation, must be developed in order to enhance their contribution and make it sustainable. This requires coordination between situational and corporate mediation.
- It is necessary to invest more in promoting women's mediation initiatives at the local level while enabling them to participate at higher levels as well. The successes of women in mediating conflicts at the community level deserve more support, but the exclusive focus on empowering women at the local level makes

the distinction between the "soft" construction of peace by women and the "rough" construction of peace that is reserved for men. Women's participation in mediation and reconciliation is essential in all types of conflicts and at all levels.

• There is a need to promote gender-responsive decentralization and the provision of public services while linking it to women's efforts in local mediation.

#### Women and work

- Allocating an annual budget by the government to support projects and programs for empowering women at the local and national levels.
- Developing national plans to support the formal economic participation of women, especially in the private sector, and facilitating banking procedures to support financing their projects.
- Establishing an institutional governance charter and strict codes of conduct for public and private sector companies and institutions and educating employees about its provisions is indispensable for protecting women, ensuring gender equality, and creating a favorable institutional climate.
- Providing affordable public transportation to facilitate women's access to work.
- Educating female employees about their rights, labour law and its gaps, and international treaties and agreements ratified by Libya.
- Requiring companies to build the capabilities of professional and leadership female employees.

#### Access to justice and health services

- There is a need to ensure that women, girls and children victims of human rights violations have access to justice, provided with medical and psychological assistance, and deal with this issue using gender perspective and gender equality concepts.
- Providing mental health Rehabilitation for victims of sexual assault and violence against women. This service should also be provided for anyone who has had their human rights violated.

- Improving access to legal aid services for victims who need it.
- Providing medical centres through the local community, and with the participation of civil society organizations including those that provide psychological assistance and rehabilitation services for victims, especially for those most vulnerable to abuse: women, children, displaced persons, migrant women, asylum seekers and refugees.

# Political empowering of women and facilitating their access to decision-making positions

- Adopting concrete policies that achieve the participation of women in all official institutions and ensure equal access to senior positions on the basis of merit and competence. This requires providing standards for public jobs that guarantee a fairer environment and ensure the participation of women in decision-making positions on the basis of merit and competence.
- Designing and implementing affirmative action policies that increase the level of effective participation of women.
- Developing databases related to national indicators and statistics related to the inclusion of women at all levels.

#### Protection of immigrant women

- Incorporating the gender perspective and gender equality concepts when dealing with the irregular migration file.
- There is a need to reform the conditions of detention centers, including immigration detention centers, and raise the level of integration of a gender perspective and gender equality in dealing with this file.
- Organizing the legal framework for the implementation of the right of asylum through a transparent mechanism in line with Libya's constitutional, regional and international obligations.

- Strengthening legal protection for migrant women who are victims of human rights violations inside and outside detention centers.
- Establishing a legislative framework that guarantees the legal status of those who wish to regulate their status within the Libyan territories for the purpose of work, according to the needs of the labour market.
- Strengthening the capacities of the national machinery concerned with women's rights and human rights and regulating the competencies of national institutions that contribute to supervising and empowering women's affairs
- Empowering national human rights institutions and existing national women's institutions in terms of their size and coverage of the dimensions of women's issues and human rights, in terms of their resources and financial budgets, and in terms of the competencies available to them.
- There is a need to regulate the competencies of national institutions concerned with women's affairs and to ensure that there is no overlap between the mandates of these institutions, as stated in the Beijing Declaration and Platform.
- Involving different women's frameworks in planning related to the work of national human rights institutions, national institutions for women and gender equality.
- Urging the activation of the National Councils for Human Rights to enhance their openness, as well as the National Foundation for Women externally and its communication with its peers in the international arena.

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#### Legal Protection of Persons With Disabilities Between National and International Efforts

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#### Introduction

Disabled persons with various types of disabilities are one of the most marginalized groups in society, given their specific situation. They face overwhelming difficulties which prevent them from living their life on an equal footing with the non-disabled, struggle to gain and maintain their rights, and are viewed as second-class citizens in terms of rights and duties. Their consequential withdrawal from society comes as a result of the lack of support for community-based reintegration programmes and of the means to implement them.

Despite efforts made at both the international and national levels following the entry into force of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)<sup>(1)</sup>, disabled people face discrimination because of the constraints that impede their active participation in society on an equal footing with others. This is essentially attributed to the medical approach and charity programs used in dealing with their cases and to the refusal to understand disability from a human rights perspective. It is in fact from this very perspective that we should identify the social, legal, economic, political and environmental conditions that prevent persons with disabilities from fully exercising their rights in order to be able to overcome this constraint. Their marginalization or exclusion from education, for instance, is not so much the result of their inability to learn, as it is the consequence of the instructors' lack of training or the difficulties they may have in accessing the classrooms and teaching spaces. As to their exclusion from the job market, this is due to the lack of appropriate means of transportation to get to their place of work, or to the negative attitudes of employers and coworkers who think that a disabled person is unfit for work. Moreover, their failure to participate in public life may be the result of a lack of resources at their disposal such as the Braille writing system, or their inability to get to voting booths due to a lack of supportive infrastructure. (2)

<sup>1</sup> Adopted, proclaimed and opened for signature, ratification and accession by the UN General Assembly resolution 61/611 of 13 December/ Kānūn al-Awwal 2006.

<sup>2</sup> United Nations, Monitoring the Convention on the Rights of Persons with Disabilities. Professional training series No. 17, 2009, p.8.

The adverse effects of having a disability, with all the impediments that it entails, are felt throughout the entire country and in all spheres of life. That being so, the attention given to public policies on the protection of the rights and interests of people with disabilities is considered an urgent and pressing social mission in the promotion of sustainable development.

#### Research Goals and Methodology

By using the international CRPD and its Optional Protocol as a benchmarking and evaluative criterion and by assessing policies, plans, programs and actions adopted at the national level in Libya to promote equal opportunities for persons with disabilities, we are able to see that the protection provided by the State to disabled people at the legislative, executive and judicial levels lies in the importance of including their issues in sustainable development strategies.

Based on this, the research paper will be divided into three main parts: the introductory part presents the international efforts relating to the rights of disabled persons and the national census of persons with disabilities, while the second part deals with the legal framework for the protection of persons with disabilities before and after the Libyan Revolution. The third and last part tackles the experience of persons with disabilities in Libya.

#### **Introductory section**

Since its foundation, the United Nations has recognized that the inherent dignity and the equal and inalienable rights of all members of the human family are the foundation of freedom, justice and peace in the world<sup>(3)</sup>. It is with this recognition in mind that the International Day of Persons with Disabilities (IDPD) is celebrated on 3 December/ Kānūn al-Awwal each year to promote awareness of disability issues. Indeed, on October/ Tišrīn al-Awwal 4, 1992, the United Nations General Assembly proclaimed by resolution No 3/47<sup>(4)</sup> that the 3rd of December/ Kānūn al-Awwal is the International Day of Persons with Disabilities for the purpose of enacting measures to improve the situation of disabled people and provide equal opportunities to them. This annual event was sanctioned one day by the international community in order to emphasize the need to respect, promote and protect the rights of disabled people throughout the globe. These rights are based on the general principles of human rights, including the International Bill of Human Rights, which provides for the full equality between all human beings without discrimination of any kind based on gender, race, color, social origin or any other form of discrimination. (5)

The International Labor Organization (ILO) has played a role in recognizing the rights of persons with disabilities to work and their right to professional rehabilitation. It issued a recommendation acknowledging the need to enable disabled workers to enjoy equal opportunities and treatment in terms of their ability to secure, retain and progress in suitable employment. (6) ILO stressed the obligation to respect both the principle of

<sup>3</sup> Preamble of the Universal Declaration of Human Rights, adopted and proclaimed by United Nations General Assembly resolution 217 A (III), 10 December/ Kānūn al-Awwal 1948.

<sup>4</sup> United Nations General Assembly (3/47/A/RES), available through the following link: https://undocs.org/ar/A/RES/47/3 (Arabic)

<sup>5</sup> Islem At-temimi. International Standards for Guaranteeing the Right of Disabled persons to Decent Work. (in Arabic) Posted on the web site of the Independent Commission for Human Rights (ICHR), Palestine; available through the following link:

https://cutt.ly/FhFk9sp (Arabic)

<sup>6</sup> Recommendation No. 168 concerning Vocational Rehabilitation and Employment (Disabled Persons), 1983, paragraph 7, available through the following link: http://hrlibrary.umn.edu/arabic/R168.pdf (in Arabic)

equality of opportunity and treatment between workers when providing vocational rehabilitation and the principle of employment assistance to disabled persons.<sup>(7)</sup>

The Universal Declaration of Human Rights has clearly stressed the right of all people, including persons with disabilities, to work, to the free choice of employment, to just and favorable conditions of work, to protection against unemployment, and to equal pay without any discrimination.

The Declaration on the Rights of Disabled Persons was issued in 1975<sup>(8)</sup> stressing the right of the disabled person to be entitled to measures designed to enable them<sup>(9)</sup>, in addition to the right to economic and social security and to a decent level of living, and the right, according to their<sup>(10)(11)</sup>

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities were developed on the basis of experiences gained during the United Nations Decade of Disabled Persons (1983-1992). These rules are founded on the International Bill of Human Rights, comprising the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, as well as the World Program of Action (WPA) concerning Disabled Persons. The latter represents a global strategy to enhance disability prevention, rehabilitation, and equalization of opportunities, which pertains to the full participation of persons with disabilities in social life and national development<sup>(12)</sup>. All these concerns culminated in the adoption of the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

<sup>7</sup> Op. cit., para. 8

<sup>8</sup> Adopted and proclaimed by UN General Assembly resolution 3447 (xxx) of 9 December/ Kānūn al-Awwal 1975.

<sup>9</sup> Proclamation No. 5 of the Declaration on the Rights of Disabled Persons.

<sup>10</sup> Proclamation No. 7 of the Declaration on the Rights of Disabled Persons.

<sup>11</sup> Proclamation No. 5 of the Declaration on the Rights of Disabled Persons

<sup>12</sup> UN/DESA, available through the following link: https://cutt.ly/dhGn65i (in Arabic)

In 2006, the UN adopted the Convention on the Rights of Persons with Disabilities, a reference document designed to guarantee the protection of the civil, cultural, economic, political and social rights of disabled persons in terms of inclusion, equality and non-discrimination. The Convention specifies that disabled persons have the right to live independently in their local communities, to make their own choices and to play an active part in society<sup>(13)</sup>.

The Optional Protocol to the Convention entered into force at the same time as the Convention. It entitles the Committee of experts to possess additional powers. This Committee may accept and review complaints from individuals, and, where there is evidence of gross and systematic human rights violations, conduct investigations. The Convention and its Optional Protocol received prompt and widespread support from the international community, which welcomed its adoption as evidence of a real commitment to a comprehensive and universal human rights framework.(14)

## Number of persons with disabilities in Libya

It is worth asking, in the first place, who this category represents in Libyan society. This question is all the more important as it helps work out a protection strategy (for the perception of reality is part of its conception). According to the 2008 census, the total number of persons with disabilities in Libya who are registered with the General Authority for Social Solidarity Fund had reached 73,892; and of that number 13,145 are children, representing 17.7 % of the total number of disabled persons.<sup>(15)</sup>

Statistics issued by the Department for Disabled Persons' Affairs of the General Authority for Social Solidarity Fund on 30 June/ Huzayrān 2012, indicate that the number of disabled persons in Libya had reached 91,322.

<sup>13</sup> UN, Human Rights of Persons with Disabilities. Available through the following link: https://www.ohchr.org/AR/Issues/Disability/Pages/DisabilityIndex.aspx (in Arabic)

<sup>14</sup> Op. cit.

<sup>15</sup> United Nations (CRC/C/EGY/CO/364), June/ Ḥuzayrān 2010, paragraph 107 ff., p.37

Disabled males represent 56% while females represent 43%. The results showed that 34% of the total number of disabled persons are between 15 and 35, which is the age range with the highest percentage of disabled persons. (16)

It is worth noting that the Director of the Disabled Persons Department attached to the Ministry of Social Affairs in the Government of National Accord has revealed that in 2009 the number of persons with disabilities in Libya was 82,000, whereas by the end of 2017 this number had risen to 103,000.<sup>(17)</sup>

The chairman of the Presidential Council, Fayez Al-Sarraj, revealed that because of the war in Libya, the number of disabled persons reached 120,000 by the end of 2018. Statistics cited by Al-Sarraj at the meeting with the National Council for the Welfare of Disabled Persons showed that the disabilities identified were caused by the war over the course of the last few years and did not include, according to him, the damages of the ongoing war in the south of Tripoli. (18)

We still need to gather accurate statistical data on disabilities resulting from the war in the eastern, southern and, more recently, western parts of the country. It remains important to point to an unfortunate truth in Libya, and that is namely the lack of interest in documentation and archiving, and the lack of a unified and updated database on Libya that accurately reflects the number of disabled people in all categories. This is attributed to an inherited ineffective archiving system, as well as to non-compliance with transparency and to the absence of a law providing for the free circulation of information. Political division and armed conflict in different parts of Libya have further aggravated the situation. Libyan citizens have been denied accurate statistical data on the number of persons with disabilities.

<sup>16</sup> Statistics cited in the report of the National Libyan Organization for the Development of People with Disabilities (NLODPD). You can find a summary of the report at the following link: http://lnohd.org/post.php?id=272 (in Arabic)

<sup>17</sup> Web site "Alaraby al-jadeed", news item titled "120 000 war disabilities in Libya" dated 4 December/ Kānūn al-Awwal 2019; available through the following link: https://cutt.ly/ehGmyN1 (in Arabic)

<sup>18 &</sup>quot;Alaraby Al-Jadeed" Portal; op.cit.

Only by taking note of a major preliminary problem, namely the clear difference between legal regulation and daily experience, can we understand the situation in Libya. Libyan legal regulations were established before the International Convention on the Rights of Persons with Disabilities and to a considerable extent provided protection for disabled people. On the other hand, this protection has been missing from people's daily lives and is now on the wane.

This situation requires investigation to demonstrate and assess it and to determine its causes and ways to bridge the gap between law and reality with respect to the rights of disabled people in Libya.

## Topic one: legislative framework for the protection of disabled people before and after the outbreak of the Libyan revolution

The legislative approach in Libya requires a division into two main historical phases: the pre-2011 phase and the post-2011 phase, given that these two phases are fundamentally different at the constitutional and legal levels.

#### First: the legislative status of persons with disabilities in Libya before 2011

Before 2011, constitutional documents in Libya such as the Great Green Charter<sup>(19)</sup> and the Promotion of Liberty Law<sup>(20)</sup> were present. Despite the references in both documents to some marginalized groups such as women and children, disabled persons were not included.

In actual fact, since 1970 Libyan authorities had started to pay attention to disabled people by issuing Resolution No. 627, whichestablished a committee to examine the issue of persons with disabilities and propose ways and

<sup>19</sup> The Great Green Charter of Human Rights in the Jamahiriyan Era. Published in Al-Baydha city on 12 June/ Ḥuzayrān 1988. (in Arabic)

<sup>20</sup> Law No. 20 of 1991 on the Promotion of Freedom. Published in the Official Gazette No. 21 of October/ Tišrīn al-Awwal 19, 1991, p. 737 (In Arabic)

means of providing the care they need. This Resolution was followed by the establishment of the Institute for the Rehabilitation of the Deaf and Mute in 1972, and the National Committee for the Welfare of Disabled Persons in 1979. There existed no law regulating the status of persons with disabilities before the promulgation of Law No.3 of 1981<sup>(21)</sup>, which defines the disabled person as "anyone who suffers from a congenital or acquired permanent deficiency that fully or partially impedes their ability to work, and/or carry out their day-to-day activities, whether this deficiency involves reduced intellectual, psychological, sensory or physical capabilities."<sup>(22)</sup>

The law has classified persons with disabilities by type into five categories as follows: (1) the mentally impaired, that is, those who are incapable of carrying out their day-to-day activities. (2) People with sensory impairment; this category includes the blind, the deaf, the hearing-impaired and the visually impaired persons. (3) People suffering from a physical impairment that hampers their ability to carry out their day-to-day activities; this includes persons with single or multiple limb amputations, the paralyzed and the crippled. (4) People with chronic diseases that hamper their ability to carry out their tasks at work. (5) People suffering from amputation or permanent disability affecting the functioning of a part of the body if the safety of that part is an essential condition for carrying out their usual activities.

Moreover, the law provides benefits for disabled persons such as shelter, prosthetic devices, education, habilitation, rehabilitation, and tax exemption for those who are working in addition to access to public transport services and customs exemption for items that they must import because of their disabilities. (23)

In 1987, Law No.5 on disabled persons was issued, retaining the definition contained in the previous law and the different classifications of disabled persons. This is a detailed classification identical to the comprehensive

<sup>21</sup> Issued on January/ Kānūn al-Thānī 27, 1981.

<sup>22</sup> Article (1) of the Law.

<sup>23</sup> Article (3) of the Law.

definition proposed in Article  $(1)^{(24)}$  of the Convention on the Rights of Disabled Persons, which states that the term includes people with long-term physical, intellectual, mental or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

The first thing we may come across regarding the difference between legal regulation and experience in Libya is the social concept of persons with disabilities, which refers exclusively to motor impaired persons who have lost their limbs or the ability to move them. On the other hand, a visually impaired person is referred to by the term "blind". As to those with hearing or speech impairments, they are referred to as deaf and dumb, while the mentally disabled person is often described as "mentally retarded". This is indicative of the discrepancy between the legal concept and the social concept of persons with disabilities. This requires intensified social awareness-raising campaigns for all Libyans with regard to a definition of disability that includes all persons with long-term impairments.

In conformity with these laws, several regulations, decrees, and work instructions aimed at implementing, amending and adding some articles for the benefits established for disabled persons, were issued. Chief among these are:

- Decree No 697 of 1984 on the regulation of sheltering disabled persons;
- Decree No 465 of 1987 on establishing a National Committee for the Welfare of the disabled person;
- General People's Committee Decision No 41 of 1990 on the issuance of a regulation organizing some of the benefits established for disabled persons;

<sup>24</sup> Article (1) of the Convention stipulates that (the term "persons with disabilities" includes people with long-term physical, intellectual, mental or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others).

- General People's Committee Decision No 207 of 2006 on adding the category of deaf persons and hearing-impaired persons who are under 18 years of age to the categories inscribed in the General People's Committee Decision No 92 of 1985 pursuant to Law No 16 of 1985 on basic allowance;
- General People's Committee Decision No 26 of 2005 on adding the category of deaf persons and hearing-impaired persons to the categories of people who benefit from a discount on public transportation;
- General People's Committee Decision No 281 of 2006 on approving the issuance of a regulation organizing some of the benefits established for disabled persons (Education of persons with disabilities, habilitation and rehabilitation, suitable work for the habilitated and rehabilitated);
- General People's Committee Circular No 3035 of 2008 on a 5-percent staffing allocation established for persons with disabilities;
- General People's Committee Decision No 665 of 2008 on placing the education of persons with disabilities within the purview of the General People's Committee for Education;
- General People's Committee Decision No 666 of 2008 on establishing a National Council for Promoting the Rights of Disabled Persons.

In this regard, a special Department for the Affairs of Disabled Persons was created as part of the General Social Solidarity Fund Authority to attend to disability issues and the welfare of persons with disabilities and to oversee the centers and schools catering to such persons. This department has a number of divisions for the affairs of disabled persons in the 16 branches of the authority at the district level<sup>(25)</sup> in Libya.

During the meeting held in celebration of the International Day of Persons with Disabilities on 3 January/ Kānūn al-Thānī 2008, the General People's Committee submitted to the Ministry of Social Affairs a set of proposals to advance the status of disabled persons. These include the creation of a Special Education Department to supervise and monitor affairs relating

<sup>25</sup> Districts ("Shaabiats") have now become municipalities ("Baladiyats"), whose number has currently risen to 100.

to special education for disabled persons as is practice in a number of countries. and A proposal was put forward requiring that a woman who is incapacitated may not be denied the basic allowance after marriage, which is what really happened in 2017. Another proposal required that disabled persons in employment may be exempt from payment of income tax, jihad (national defense) tax and other levies and charges to help towards meeting additional expenses incurred as a result of their disability.

In this context, it is important to shed light on the rights that are guaranteed by Libyan local law, embodied in Law No 5 of 1987 on disabled persons. These rights are:

■ The Right to accommodation: The law stipulates that persons with disabilities shall be accommodated in specialized homes that meet their health and psychological conditions and that are designed to fit their status as disabled persons. (26) Accommodation includes providing each resident with full board, appropriate care, education, habilitation and rehabilitation services, either in disabled housing facilities or in external institutes (27) and centers. A disabled person who is unable to meet his or her personal needs and who lives in residences other than disabled housing facilities, may agree with someone else to assist him or her, and may receive a monthly cash grant to help him or her cover the expenses of the services he/she receives, in addition to appropriate services in kind and accrued monetary benefits in accordance with Social Security Law (28).

The State undertakes to pay the above-mentioned approved cash grant to the disabled person or to whoever provides for him or her throughout their life for as long as they are unable to satisfy their personal needs. (29) The disabled person has the right to have access to assistive devices necessary to gain or regain the ability to carry out normal day-to-day activities in society without payment and in accordance with the terms and conditions

<sup>26</sup> Article (8) of the Law

<sup>27</sup> Article (9) of the Law

<sup>28</sup> Article (11) of the Law

<sup>29</sup> Article (12) of the Law

established in the Regulations. Disabled housing facilities are required to provide their residents with this equipment as well as the services necessary for their installations and maintenance without payment. (30)

The right to education<sup>(31)</sup>: Basic education is considered, according to the law, a right and a duty for persons with disabilities who are old enough to go to school. Similarly, disabled adults may benefit from literacy programs bearing in mind the disability conditions when designing the curriculum. Disabled persons should receive their education in homes for disabled persons, external institutes and centers or special classrooms in regular schools in case their inclusion in regular classes proves impossible. When the disabled person successfully completes their basic education, they have the right to continue their education in accordance with the provisions of the Regulations governing the exercise of this right, and the extent to and manner in which this assistance is provided to the disabled person. In addition, the General People's Committee for Education and Scientific Research, in coordination with the relevant authority, sets up rules concerning the equivalence of scientific and technical certificates awarded to disabled persons by specialized schools, institutes and centers.

However, the State is still unable to meet the educational needs of disabled persons. Relevant organizations confirm that a large proportion of them do nothave access to adequate education and professional rehabilitation; and even when these needs are properly addressed, this is often done exclusively in cities. This would violate the principle of equality and equal opportunities, and prevent disabled persons from participating effectively in the development of society<sup>(32)</sup>.

• As far as the right to habilitation and rehabilitation is concerned<sup>(33)</sup>, the disabled person has the right to medical, psychological, social, educational or vocational habilitation and rehabilitation, depending on his or her state.

<sup>30</sup> Article (13) of the Law

<sup>31</sup> Regulated under articles (14, 15, 16, and 32) of the Law

<sup>32 &</sup>quot;Twenty organizations are sounding the alarm bell with regard to the conditions of disabled persons in Libya", article published on "Ifriqiya Ikhbariya" Portal on 3 December/Kanun al-awwal, 2018 available on the following link: https://www.afrigatenews.net/article/

<sup>33</sup> Regulated under Articles (17 and 21) of the Law

Vocational habilitation or rehabilitation concerns disabled adults as well as disabled youth who have completed basic education but dropped out of school or have proven to be unable to receive basic education. Vocational habilitation and rehabilitation are compulsory for the disabled person provided that they are able-bodied enough to receive education and they are below forty years of age.

However, rehabilitation centers for disabled persons in Libya suffer greatly from poor services, including the failure to recruit medical personnel and assistance, whether in terms of number or in terms of professional habilitation and qualification, in addition to the non-availability of medications and equipment, the lack of centers specialized in prosthetic appliances and the absence of research centers for disabled persons.

• Concerning the right to work<sup>(34)</sup>, a disabled person who has completed their training and rehabilitation has the right to work in a role that is commensurate with their capabilities provided that public administrative agencies, companies and institutions undertake to set aside a certain percentage of positions for persons with disabilities. This percentage is determined by a Decision from the General People's Committee based on a proposal by the General People's Committee for Public Service. The General People's Committee for Social Security in the municipality has the responsibility to monitor the disabled worker during the time of his or her employment. This monitoring involves helping them adapt to the job to which they are assigned, overcoming the difficulties they might be facing and standing by them in defense of their legitimate interests and rights arising from their role. The incomes of self-employed persons with disabilities that are generated from their activities are exempted from taxation.

The State has been lax in enforcing and developing legislation and laws relating to the promotion of equal work opportunities for disabled persons. Therefore, it has the obligation to set up appropriate habilitation and rehabilitation programs for disabled persons in order to increase their chances of gaining access to job positions in the civil service or in the area of entrepreneurship and the private sector.

<sup>34</sup> Regulated under articles 22 and 24 of the Law.

• The right to freedom of movement<sup>(35)</sup> is the backbone of the United Nations Convention on the Rights of Persons with Disabilities. Indeed, persons with disabilities resulting from a war they fought in defence of their homeland or its interests, are exempted by law from paying public-owned transportation fares (land, sea and air) inside and outside Libya. The law also exempts other disabled persons whose condition requires the attendance of an escort from paying the cost of an urban public bus fare. The disabled person and his or her escort receive a 50 per cent discount on public-owned means of transport (land, sea and air) inside and outside Libya provided that the General People's Committee, based on a proposal from the Social Security Fund, issues a Decision to identify the population of disabled persons who need escorts for travel, and the implementing bodies of this benefit. The exemption and discount are offered only once a year for travel between Libya and foreign countries. The right to exemption or discount is extinguished once the year is over. Also exempted from customs duties are tools, equipment and appliances imported for the benefit of disabled persons. These duties are determined by a decision from the General People's Committee of the Treasury. Necessary procedures are taken to make it easier for disabled persons to travel and to have access to public buildings and facilities. The General People's Committee determines the aspects of this facilitative measure as well as the conditions and procedures of its application.

Despite the State's commitment to facilitate accessibility, disabled persons have difficulty moving about and getting to public places for their daily needs. Most administrative and governmental buildings do not have main entrances designed for disabled persons or they are not properly equipped to enable them to use these entrances with ease. Moreover, elevators do not have Braille buttons to enable the blind to use them, and there are no pavements suitable for use in moving from one place to the other.

<sup>35</sup> Regulated under articles 25:31 of the Law.

- The right to raise awareness of the rights of disabled persons and the fight against discrimination. There has been no real awareness of the rights of disabled persons; and the State, the media and local administrations should all have worked, according to their possibilities and capabilities, to:
  - disseminate the culture of equality and non-discrimination;
  - set up national strategies and programs to nurture the cultural level of society;
  - encourage the integration of disabled persons in development programs, and
  - develop the basic rights of disabled persons.
- The right to political participation: One of the misgivings about Law No 59 of 2012<sup>(36)</sup> concerning the local government and its executive regulation<sup>(37)</sup> is that it limits the membership of disabled persons in local councils to one member only among disabled revolutionaries, all whilst considering his or her existence improbable ("if he ever exists" is found in the text)

The laws relating to legislative elections (Election of the National Congress<sup>(38)</sup>, election of the Constitution Drafting Assembly<sup>(39)</sup>, election of the Council of Representatives<sup>(40)</sup>) do not give disabled persons their fair share, whatever the disability, and only refer to the granting of a share to women, thus revealing a legislative deficiency regarding the enjoyment by disabled persons of their political rights. Despite the availability of general seats to disable persons, voters – alas – are initially not inclined to vote for them for cultural reasons. For this reason, there was nothing wrong with supporting them with a share, even temporarily until the public perception of disabled persons changes.

<sup>36</sup> Issued on 18 July/ Tammūz 2012

<sup>37</sup> Under Decision of the Council of Ministers No 130 -2013, dated April/ Naysān 2013

<sup>38</sup> Law No 4 of 2012 on the election of the General National Congress and its amendments.

<sup>39</sup> Law No 17 of 2013 on the election of the Constitution Drafting Assembly.

<sup>40</sup> Law No 10 of 2014 on the election of the Council of Representatives

Thus, Libya has ignored its commitment, under the Convention on the Rights of Persons with Disabilities<sup>(41)</sup>, to guarantee the possibility for disabled persons to participate actively and fully in political and public life on equal footing with others. It has also disregarded the duty to provide voting methods that are appropriate and easy to understand and use, and to allow them, where necessary, at their own request, to choose a person to assist them in the voting process. Furthermore, it has overlooked their right to stand for election, to hold office effectively, to perform all public functions at all levels of government and has failed to facilitate the use of assistive and new technologies where appropriate.

In this political arena, we notice the inadequacy of the protection that local laws provide in comparison with international conventions on the rights of disabled persons. In fact, the only concern for civil society organizations in the area of political rights of disabled persons, is how the voter expresses his or her choice in an environment that allows him or her access the ballot  $box^{(42)}$ .

# Second: the legislative situation in Libya regarding disabled persons in the post- 2011 period

### I. The Constitutional framework of the disabled persons' rights

Article (5) of the Provisional Constitutional Covenant (2011) stipulates that "the family is the basic pillar of society and is placed under the protection of the State. The State protects and encourages marriage, guarantees the protection of motherhood, childhood and old age, and takes care of children, youth and people with special needs."

<sup>41</sup> Article (29) of the Convention.

<sup>42</sup> Africa News Portal, news item titled: «Libyan Electoral Commission holds a workshop on disabled persons' participation in elections," dated 5 December/kanun al-awel 2019, available on the following link:

https://cutt.ly/QhFzj2y (in Arabic)

One of the criticisms levelled against the text of this law is that it uses the concept of people with special needs instead of the internationally adopted concept, and that the expression "people with special needs" does not place any burden on the State regarding them as it implies simply providing care. Thus, the wording of the text reflects the charity-based approach the State has adopted in dealing with disabled persons. Moreover, there is no constitutional text relating to disabled persons as an independent category with different rights and safeguards depending on their disabilities, like in many constitutions - such as the Egyptian Constitution (43) – which guarantee the rights of disabled persons in a specific and detailed text, emphasizing the protection of disabled persons from all kinds of discrimination.

The Draft Constitution (2017) corrected the inadequacy of the Constitutional Covenant by including a separate Article relating to disabled persons. It committed the State to guarantee the sanitary, social, educational, political, economic, sports and recreational rights of disabled persons on equal footing with others. The State shall endeavor to customize public and private facilities and the surrounding environment to enable them to integrate into society in a complete and effective manner. The State shall also take necessary measures to activate the laws that guarantee this (44). Therefore, once the text is adopted the State must amend the entire system of laws relating to persons with disabilities.

In order to put an end to discrimination against citizens in general and disabled people in particular, the Draft Constitution states that "all male and female citizens shall be equal in and before the law. There shall be no discrimination therebetween. All forms of discrimination for any reason,

<sup>43</sup> Article (81) of the Egyptian Constitution states that "The State shall guarantee the health, economic, social, cultural, entertainment, sporting and educational rights of persons with disabilities and dwarves, strive to provide them with job opportunities, allocate a percentage of job opportunities to them, and adapt public facilities and their surrounding environment to their special needs. The State shall also ensure their exercise of all political rights and integration with other citizens in compliance with the principles of equality, justice and equal opportunities".

<sup>44</sup> Article (60) of the Draft Constitution.

such as ethnicity, color, language, gender, birth, political opinion, disability, origin, or geographical affiliation, shall be prohibited in accordance with the provisions of this Constitution."<sup>(45)</sup>

Although the 2017 Draft Constitution provides for the constitutional protection of persons with disabilities, it disregards a procedural protection for disabled persons as laid down in the Egyptian Constitution, whose Article (55) codifies criminal procedures relating to disabled persons. According to this Article, "every person who is either arrested, detained, or his freedom is restricted shall be treated in a manner that maintains his dignity. He or she may not be tortured, intimidated, coerced, or physically or morally harmed; and may not be seized or detained except in places designated for that purpose, which shall be adequate on human and health levels. The State shall cater for the needs of people with disability." We are hoping that this provision can also be enshrined in the future Libyan Constitution.

# II. Libya's position regarding international conventions on the rights of disabled persons

Following the provisional Constitutional Covenant (2011), which states, "The State shall endeavor to join the regional and international declarations and covenants which protect these rights and freedoms" (46), Libya decided to accede to international conventions on the rights of disabled persons on 24 February/Šubāt 2013 pursuant to Law No 2 issued by the General National Congress, with reservations on the first paragraph of Article (25). Indeed, the said paragraph commits the States to ensure access for persons with disabilities to sexual and reproductive health services in a manner that is not incompatible with the ethical principles of the divine laws and national legislations, and whilst not contravening the provisions of the Islamic Sharia. The instrument of accession to the Convention was deposited on 13 February/Šubāt 2018 following the issuance of Law No. 6 of 2017 amending Law No. 2 of 2013 to withdraw the reservation to the Article, provided that the first paragraph of Article (25) of the Convention be interpreted to mean the provision and delivery of health services without discrimination on the

<sup>45</sup> Article (7) of the Draft Consitution.

<sup>46</sup> Article (7) of the Constitutional Covenant.

basis of disability, and in a manner that does not contravene the provisions of the Islamic Sharia and local legislations. The question arises, however, that is to what extent is Libya bound by the general and specific obligations as provided for in that Convention.

To answer this question, we need to admit from the outset that the Libyan legislator does not bind the Libyan State to conventions and treaties automatically. In fact, the 2011 provisional Constitutional Covenant does not provide for the binding force of international conventions once ratified, whereas the Libyan draft constitution has placed international conventions above the law and below the Constitution, and has directed the State towards taking measures necessary for their enforcement in a manner that does not contravene its provisions<sup>(47)</sup>. The Libyan judiciary has ruled on the legal status of international conventions today<sup>(48)</sup>, stating that the international conventions ratified by the State are to be given effect as soon as the ratification procedures are completed, and will prevail over the legislations in force in case of conflict between them.

# III. Recent laws and decrees for the protection of disabled persons in Libya

In 2017, the House of Representatives of Tobruk issued Law No. 1 of 2017 by adding provisions to Law No. 16 of 1986 relating to the basic allowance:

The first provision: Article (4) provides that the husband should be regarded as a legitimate breadwinner for his spouse; the amendment provides that an exception is made for the disabled spouse whose breadwinner becomes the society and who is eligible for an independent basic allowance.

The second provision: Article (7) provides that the categories eligible for a basic pension are elderly persons, invalids, widows and orphans whose means of support have been curtailed or restricted. The amendment provides that the disabled female spouse should be included during the

<sup>47</sup> Article (13) of the Draft Constitution

<sup>48</sup> Constitutional Appeal No. 01/57 at the meeting held on 23 December/ Kānūn al-Awwal 2013.

whole period of her disability. These legal instruments are likely to increase State protection of disabled women facing financial need during the whole period of disability whether married or unmarried.

In May/Ayar 2018, the Presidential Council of the Government of National Accord disseminated Circular No (2) to all the ministries and public bodies in which it requested compliance with the provisions of the Convention and adherence to legislation in force, including the provisions of Article (87) of the executive regulation for Law No. (12) of 2010 relating to work relations, which commits employers to allocating no less than 5 percent of their staff positions to disabled persons. However, we cannot state with certainty whether the instructions of this circular are being implemented. Despite this, we witnessed the implementation of the provisions of Article (87) of the executive regulation of the Labor Code in the eastern regions of the country through tireless cooperation between the Ministries of Labor and Social Affairs.

Decree No. 40 of 2020 issued by the Council of Ministers of the East-based Interim Government of the Libyan Parliament, on establishing the National Centre for Research on Disability under the Ministry of Social Affairs to conduct scientific and applied disability research, may be considered the most recent decision in support of disabled persons in Libya. Nevertheless, the Centre currently exists only on paper despite its importance and its progressive targets. Scientific and applied research on disability will recommend enhanced protection for disabled persons and will influence policy-making in this regard.

### IV. Criminal protection of persons with disabilities in Libyan law

National and international criminal laws diverge on how to extend criminal protection to disabled persons. Indeed, some laws consider disability as a characteristic of the victim, making it imperative to provide them with more protection because their weakness makes them an easier target for abuse. It was therefore decided that additional protection should be accorded through providing for stricter penalties for the commission of a prohibited

act against a disabled person. Other laws such as, for instance, Article (303 bis 4) of the Algerian Penal Code, consider the human trafficking of people with disabilities an aggravating circumstance.

For this reason, it is important to shed light on the provisions of the Libyan Criminal Law, as it will be observed that criminal protection fails to include disabled persons:

- The victim's disability does not constitute a compelling reason for prescribing heavier penalties regarding attacks against the life or the physical integrity of the victim, with the exception of the text of Article (387) of the Penal Code, which provides for stricter punishment for the offence of "abandonment and neglect" by the person who has the guardianship or care if the victim is a child or is unable to carry out his or her usual activities because of a physical or mental disease, old age or any other reason.
- Regarding sexual offences, Articles (407) and (408) texts incriminating sexual intercourse and indecent assault consider the lack of resistance because of physical or mental illness to be falling within the provision of coercion. That is to say thatsexual intercourse and indecent assault are considered coercion offences even if the disabled person has consented. Accordingly, his or her consent does not have any effect on the classification of the offence and will by no means make him or her complicit in the crime.
- As to the provisions for money abuse crime, the Libyan Criminal Law does not provide for greater protection against burglary, extortion or fraud.

Nevertheless, the legislator provides for one single criminal protection in Article (463) of the Penal Code, criminalizing any person who takes advantage of a victim's need to get him or her to do something legal but likely to be detrimental to his or her interests or the interests of others in order to obtain benefit for himself and for others if the victim has not reached the age of maturity or has weakness or a personal whim or lack of experience, or if the perpetrator took advantage of the victim's weakness, their mental illness or their defect. Unfortunately, the punishment provided for in this

case is very trivial: imprisonment for a period of no less than three months and a fine between 20 and 200 LYD. The penalty increase if the perpetrator is the guardian or custodian of the victim.

In the same way, the provisions of Law No. 10 of 2013 on the Criminalization of Torture, Forced Disappearance and Discrimination, do not provide for any increased protection for disabled persons. In Article (4), which criminalizes discrimination, there is no mention of marginalized groups and disabled persons among the criminal act criteria. The Article focuses on the regional, tribal and ethnic criteria in the first place, although discrimination against a person on the basis of disability constitutes a violation of the inherent dignity of man. The Article prescribes a penalty of at least one year's imprisonment for any public official who discriminates against Libyans on the basis of their place of origin, tribe and ethnic group when considering their eligibility for recruitment or promotion to public positions, or entitlement to benefits and services in order to disenfranchise them, prevent them from benefiting from these benefits and services or to violate their priority rights.

Article (3) criminalizing persecution prescribes the penalty of imprisonment for anyone who denies any of the rights of a person because of their belonging to a particular group, community, region or locality, or because of their or color of skin. To some extent, this Article can be useful in filing claims against whoever deprives a disabled person of his or her rights; for belonging to disabled people can be seen as belonging to a particular group, although it is preferable to expressly mention the term "disabled persons". Particularly in light of the fact that this is a case of criminalization where the judge is prohibited from adopting a broad interpretation or analogy or may tend to use a strict interpretation of the term "group", which does not include disabled persons.

Also missing from the substantive rules of Libyan criminal law is any protection for disabled persons in situations of armed conflict, humanitarian emergencies and natural catastrophes, despite the Convention's obligation to take all necessary measures to ensure their protection and security in this

context<sup>(49)</sup>. This is in addition to the absence in Criminal Procedure Rules of any procedure for dealing with disabled persons, and the lack of decent detention facilities designated for them.

Interestingly, the Criminal Code contains provisions relating exclusively to the deaf and mute. Among these are:

- Article (86) of the Penal Code, which exempts from criminal liability the deaf-mute who, because of his or her disability, had neither strength nor feeling or will at the time the offence was committed
- Article (85) of the Penal Code states that the deaf-mute is to serve his or her sentence in a special building and be placed under special care to receive appropriate treatment. The judge is to prescribe only a minimum detention period. As long as the sanction has the status of a precautionary measure rather than punishment, it will be maintained unless the supervising judge orders his or her release based on the opinions of the Chief Executive and the attending psychiatrist once it has been established that his or her state of health makes \their reintegration into society possible.

### Judicial protection of disabled persons

One of the constitutionally and legally guaranteed rights is the right to access to justice, which is accorded to all including persons with disabilities. This right does not jeopardize their integrity and they are entitled to enjoy this right in full equality with all other citizens and residents of and inLibya.

Overall, the many conditions impeding disabled persons' access to justice can be summed up in the following points:

- The Executive's tendency to arbitrarily apply the laws and regulations, holding as it does the highest level of authority over the citizen,
- The excessive number of regulations governing disabled persons' benefits and advantages, which disrupts executive and judicial work,

<sup>49</sup> Article (10) of the Convention.

- Courthouses are not designed to be promptly and safely accessible to people with disabilities,
- Disabled persons' access to justice is conditional upon their legal knowledge and their ability to have legal aid.
- The slowness of legal proceedings is one of the most important constraints to access to justice for non-disabled citizens, let alone the disabled, as the litigation deadlines may be extended to five years because of procrastination.

Sufficient evidence of these constraints is to be seen in the ruling of the High Court<sup>(50)</sup> involving a disabled independent "merchant" who received fair and equitable treatment. The legislative protection against the arbitrariness of the Executive, at least evident in its procrastination in securing the rights of disabled persons, had been found to be insufficient. However, the High Court ruled in favor of this disabled person and against the Executive and provided him with legislative protection even after a while.

### Details of the case are given in the following

In the beginning, the disabled person filed a tax return to the Tax Department on his income earned from the sale of cosmetics. The Committee estimated the amount of his income to be 9800 LYD, which means that it had treated him as though he was not disabled. The Committee established that he only suffered from a permanent impairment in his left lower extremity, while it was required that disabled persons suffer amputation or permanent impairment of more than one of the four parts of the body as stipulated in Article (20) of the Regulation to Law No. 5 of 1987 issued by Decree No. 41 of 1990.

Consequently, the disabled man complained to the First-Instance Commission, for in his case being disabled implies that the conditions for exemption from income tax were met. Then he complained to the Appeal Committee for Tax Disputes, which rejected his complaint by Decree No. 68 of 1995. He then resorted to litigation through appealing against the decision

<sup>50</sup> Administrative Appeal No. 32/45 of High Court, hearing of 31/3/2002.

of the Appeal Committee for Tax Disputes before the Administrative Division of the Court of Appeal in Benghazi on 23/12/1997, which ruled in his favo. Thus, he then repealed the decision and became exempt from paying the tax.

However, the Government Cases Department filed an appeal of the judgment in favor of the Executive before the High Court. The judiciary continued to apply a policy of positive discrimination towards persons with disabilities and sided with the disabled merchant. The High Court rejected the appeal filed by the Government Cases Department on grounds that one of the advantages for disabled persons provided for in Article (4) of Law No. 5 of 1987 on disabled persons, is tax exemption for the proceeds of activities engaged in by those who are self-employed. Regulations were used to determine the conditions for entitlement, and Article (20), paragraph C of the regulations governing some of the benefits established for disabled persons pursuant to Decree No. 4 of 1990, stressed the requirement that the beneficiary of the aforementioned benefit must have suffered an amputation or a permanent impairment of more than one of the four parts of his or her body. The medical report of the Competent Medical Committee of the Social Security Fund certified him to be disabled, which gave him the status of 'disabled person' and made him eligible for the benefits provided for in the law and the regulations governing the benefits established for disabled persons<sup>(51)</sup>.

<sup>51</sup> Administrative Appeal No. 32/45 of High Court hearing, dated 31/3/2002.

### Topic 2: Everyday experience of disabled persons in Libya

In compliance with the United Nations Convention on the Rights of Persons with Disabilities<sup>(52)</sup>, the States undertake efficient and appropriate measures to facilitate the enjoyment of persons with disabilities of their right to inclusion and full participation in society, through equal access to the community services and facilities available to all people, and to ensure that these services respond to their needs.

In this regard, we will demonstrate how Libyan legal texts provide for inclusion. Unfortunately, these texts are only tentatively applied. In reviewing the main benefits and advantages guaranteed by Law No. 5 of 1987 on disabled persons, we can sum them up as follows:

Accommodation, subsidized domestic services, assistive devices (prosthetics), education, habilitation or rehabilitation, suitable work for those who have received habilitation, tax exemption for self-employed persons with disabilities, access to public transport services, customs exemption for items that they must import because of their disabilities and facilitated access to public spaces. The regulations determine the needs of each group of disabled persons and the conditions for entitlement to these benefits and advantages.

Article (32) is considered one of the shameful articles in Law No. 5 of 1987 relating to persons with disabilities, as it decides to suggest that a disabled person be denied all or part of the benefits established pursuant to this law if they refuse to comply with education, habilitation, and rehabilitation programs, to engage with any work assigned to them, or to continue working without a reasonable excuse. The denial of these benefits is decided by decree from the People's Committee for Social Security at the municipality. From the human rights perspective, one may say that the Article misses the point in giving the Executive Branch jurisdiction over the denial of legally guaranteed rights to disabled persons. It would have been much better if the sanction by denial had been left to the discretion of the Legislative Branch,

<sup>52</sup> Article (19) of the Convention.

and if the law had required a medical, social and economic survey on the person refusing to comply with educational programs, qualification or work, before deciding on the approval or denial of benefits.

One of the most prominent gaps between daily experience and legal regulation in Libya is to be found in Article (34) of Law No. 5 of 1987 pertaining to disabled persons, which provides for the establishment of the National Committee for the Welfare of Disabled Persons of the Social Security Fund. The General People's Committee issued a decree to create it and organize its work based on a proposal from the Social Security Fund. Article (35) defines its areas of competence as follows:

- planning for disability care,
- proposing legislation regulating disabled persons' affairs to provide services and decent living conditions for them similar to those offered to non-disabled persons, promote their integration into society and achieve full participation,
- Liaising with Arab and international organizations and bodies in the area of disability care, and participating in conferences, symposia and seminars in this field,
- Providing technical advice to the organizations and bodies working in the field of care for disabled persons,
- Promoting the activities of voluntary popular associations and organizations in the field of care for disabled persons,
- Conducting research and studies on disability, including its causes and ways of fighting it and reducing its incidence,
- Informing citizens and raising their awareness of the causes of disability and the measures to be taken to avoid its occurrence.

Nevertheless, it turns out that the Committee did not fully undertake any of these tasks. Indeed, thirty years after its creation – in 2018 – the Committee is still considering the possibility of establishing a High Committee for disabled persons that will be entrusted with the follow-

up on this group, the early detection of disabilities as well as the needs of disabled persons suffering from chronic incapacitating diseases and the issuance of tax exemption decrees for the provision of equipment such as cars and prosthetic appliances to this group. The Committee also continues to stress the necessity of developing the work of the National Committee for the Welfare of Persons with Disabilities, and the interdependence among government sectors in order to facilitate service delivery to them<sup>(53)</sup>.

In practice, persons with disabilities could not even get a meeting with the Minister of Social Affairs in order to describe the extremely difficult living conditions they were facing. Affiliates of Disabled Persons Freedom Association in the city of Al-Bayda staged a protest in front of the Association Headquarters over the marginalization they have been subjected to by the Ministry of Social Affairs in the interim Government. Protesters said that they were being ignored by the Ministry of Social Affairs, for they were unable to meet Fathiyya Hamed, the Acting Minister in the interim Government, and demanded that the Department for Disabled Persons' Affairs attached to the Ministry of Social Affairs be changed. Protesters said that these were claims on behalf of Disabled Persons Freedom Association, Irada Jabal Sports Club for Persons with Disabilities and Jabal Al-Akhadar Disabled Persons Sports Sub Union. Jabal Al-Akhadar Libyan Workers Union, Jabal Al-Akhadar Youth Movement and several other societal institutions participated in this protest. (54)

### The War Disabled': a new concept in Libya

Since 2011, due to the ongoing armed conflict in Libya, the number of persons with war injury-related disabilities has increased.

<sup>53</sup> Libya News: the National Committee for People with Disabilities holds its first meeting in Tripoli, available on the following link:

https://www.libyanews.co/libya-news/34121.html (in Arabic)

<sup>54</sup> Channel 208, news item titled "Protesters in Al Bayda: the Ministry of Social Affairs Marginalizes us", available on the following link (in Arabic):

https://cutt.ly/ihGmFI5 (in Arabic)

In this regard, Article (1) of Law No.4 of 2013, on some provisions relating to people wounded in the war for liberation , proposes a new group of disabled people who suffered permanent disabilities during the fighting in the 2011 uprising against the former regime. Among those are also civilians who were injured because of the attacks launched by this regime. This new group received enhanced benefits and entitlements compared to other disabled persons. This is likely to reflect the unequal treatment of persons with disabilities and the discrimination between them based on political affiliation, and to put upon the shoulders of the State the obligation to protect and promote the rights of all Libyan citizens rather than link this protection with political affiliations or any other discriminatory rules<sup>(55)</sup>.

With regard to this new group, it now suffers from many human rights violations. As one of the disabled soldiers put it, "the procedures and decisions that the Libyan authorities have taken about disabled persons' conditions remain on paper only" and they do not pay attention to the right of the disabled person to freedom of movement. This has established a bitter reality forcing disabled people to seclude themselves from the world and limiting the effectiveness of their claims to be integrated in society. "An example of this is the implementers in Libyan institutions who ignore the governmental decree providing for the right of disabled persons to have special ramps dedicated to them in government departments and public areas, and even elsewhere so that they can go about their personal affairs and meet their daily needs. This painful reality is revealed as soon as one goes into a public area, wherethe onlooker quickly notices the absence of special provisions for persons with disabilities." (56)

<sup>55</sup> Cairo Institute for Human Rights Studies, news item titled "CSOs welcome Universal Periodic Review of the Libyan Human Rights File before the United Nations, 2015, available on the following link:

https://cutt.ly/NhFEzuC (in Arabic)

<sup>56</sup> Al-Arabi Al Jadid, news item titled "120 thousand war disabilities in Libya", dated 4 December/kanun al awel 2019, available on the following link:

https://cutt.ly/qhGmC5N (in Arabic)

Nothing could better demonstrate the number of violations suffered by disabled persons than the case of the eight victims who were injured in the war on terrorism (four amputees and four struck in the eyes). They went to the General Command Headquarters to make their voices and grievances heard on the issue of the wounded given the competent authorities' inaction when their health conditions deteriorated, and the delay in the procedures for traveling abroad to receive prosthetic limbs. They were beaten and transferred to the military police prison in the city of Marj in northeastern Libya, which led the injured soldiers in the Libyan army and enabled units to organize a protest requesting the release of their fellow soldiers in front of Benghazi Town Hall on 6 July/Tammuz 2018. (57)

# The role of civil society organizations in raising awareness of and promoting the rights of disabled persons

Civil society organizations play an important role in the promotion of disabled persons' rights either by contributing to the promulgation of laws, the development of policies and strategies for persons with disabilities and the establishment of bodies and institutions that represent them, or by contributing to the monitoring of violations of the rights of disabled persons. These organizations also play an active role in spreading awareness of the rights of disabled persons.

Remarkably, civil society organizations constitute a vital area in which women play an effective role in Libyan society. Regarding disabled persons, we have noticed that the majority of civil society leaders are women with disabilities, who are driven by the sense that they suffer from dual discrimination: as women and as disabled persons.

In order to compare realities on the ground with the aforementioned legal system, we conducted an interview in Benghazi with several physically disabled feminist figures who were active in the field of civil society and

<sup>57</sup> Alwasat Portal; news item titled "Injured soldiers protest for the release of eight fellow soldiers detained by Military police in Marj", dated 9 July/Tammuz 2018, available on the following link: (in Arabic)

http://alwasat.ly/news/libya/211926 (in Arabic)

human rights. They are Samiha Ben Ali, Rabia Omar Khalifa and Zeineb Al-Fakheri. Through them, we have identified the constraints they encountered as disabled women..

First: According to Mrs Samiha Ben Ali<sup>(58)</sup>, the challenges that impede the human rights work of marginalized people with disabilities include:

- Dispersal and lack of coordination among disabled groups as those with mobility disabilities and those with visual and hearing impairment work independently from one another.
- Absence of volunteering in humanitarian action. Even though sometimes this idea is applied, it is met with refusal from officials who want to protect their institutions.
- One of the constraints to good service delivery in public institutions is that the staff member does not belong to the group that the service is for. Mrs Samiha Ben Ali prefers the staff member to be a disabled person so that he or she can better empathize and deal with situations, as well as understanding the depth of the tragedy.

Besides this, there are other types of disabilities resulting from armed conflict. "In 2011, the American organization CRITEF gave the Association a grant in the form of sewing machines and computers; and we were serving the society through our work, typing and photocopying documents, sewing hospital bed sheets and doctors' coats before the head office of the Association was attacked and the machines were stolen during the 2014 war. The perpetrators have not been identified to this day."

Samiha added that among the constraints is the legislative and executive separation between war disability and naturally occurring mobility disabilities, although they are one and the same damage, just as the claims and the rights are one and the same thing. In fact, the difference is huge in terms

<sup>58</sup> She was a public relations officer who worked with the Information Centre at the Benghazi Rehabilitation Centre for Disabled Persons for more than 30 years. Currently she is retired and is involved in charity action as President of the Association "Stand Together in Support of Disabled Women".

of the benefits being granted under Law No. 4 of 2013 concerning a report on the provisions relating to the war wounded with permanent impairment. Even social disparity in terms of respect and status is considerable.

According to her, "one of the challenges is the wrongful application of the legislation by law enforcement officers, for whom isolation means protection. Discrimination by isolation is another type of disability. I used to mock their slogan<sup>(59)</sup> while telling them at the Social Security Department, "Leave us alone and give us a chance to make a new start and integrate into society." Indeed, one of the implementation constraints in this regard in Libya is the fact that from the beginning, implementers chose to provide care to persons with disabilities, adopt them fully as residents in special homes far away from society and spent enormous amounts of money for this purpose. In hindsight, it would have been better if they had helped families to take care of their disabled children. Had this been done, it would have reduced State budgetary expenditure and provided permanent and proper psychological and social protection for the disabled persons."

Mrs Samiha Ben Ali believes that a culture of rejection is also another constraint. The physically healthy person considers the disabled person as the Other, and they are not aware that they themselves may one day become disabled through old age, illness or accident and ends up becoming that Other.

On the other hand, she thinks that the problems of disabled people should be addressed through the joint efforts of the municipality and the Ministries of Health, Education and Social Affairs. The municipality ensures that services provided by streets, shops and other amenities should be accessible for all. The Ministry of Education should gear educational curricula towards raising a generation of citizens who are aware of and accept disabled people. Curricula should be designed in such a way that disabled persons can alsohave access to them. The Ministry should also focus on the role of the social specialist at school or training centers with regard to communication with and training of families to deal with their disabled children in compliance with what is provided for by the law and

<sup>59</sup> The slogan is "The arms of the State embrace the disabled"

required by the regulations. On the health front, healthcare services remain the most important services to which disabled persons wish to have access to. As to the Ministry of Social Affairs, it acts as the 'guardian' of the disabled person with regard to his or her affairs.

According to what Mrs Samiha Ben Ali said, one of the challenges that Libyan public institutions are currently facing after fifty years of consecutive bulldozing, particularly at the transitional stage, is the lack of budgetary funding. This situation led to the closing down, since 2011, of the Women's Department attached to the Ministry of Social Affairs and led public institutions to beg for several things, for example buses for the physically disabled and cotton wool for disabled persons.

**Second:** Mrs Rabia Omar Khalifa<sup>(60)</sup> started work as an activist with civil society institutions in 2011. She is a member of "Kollouna Maan" ("All Together"), an association for disabled women through which she works to raise disabled women's awareness of their rights. She is also a founding member of "Attasmeem liljamii – Libya" ("Design for All – Libya"), an association which aims to disseminate the concept of "design for all" in society, particularly among civil engineers and construction engineers.

Rabia was perplexed by the fact that Libya had signed and ratified the Convention on the Rights of Persons with Disabilities, which provides in Article (9) for the right to easy access, considering that in Libya implementational and legislative interest in easy access is nonexistent. She is now thinking seriously of establishing an organization to monitor and document the violations, and she maintains that the international protection enshrined in the Optional Protocol to the Convention on the

<sup>60</sup> She is an engineer with a B.A. in Electrical Engineering from the University of Benghazi (1994). She works at the Public Electricity Company. She is a disabled woman who uses a wheelchair. When she was ten months old, she contracted poliomyelitis and underwent several operations, traveling to Europe for treatment. Her restlessness affected her education, which was continually interrupted and difficult to cope with. The reason is not so much the educational curricula or her ability to achieve educational attainment, as it is the lack of accessible facilities in schools and universities for disabled student who use wheelchairs. Architectural environment in Libya is not designed to cater for everyone, including people with disabilities.

Rights of Persons with Disabilities could be used to secure better protection. Article (1) of the Protocol provides for the establishment of the Committee on the Rights of Persons with Disabilities, whose competence is to receive and consider communications from or on behalf of individuals or groups of individuals, subject to its jurisdiction, who claim to be victims of a violation by a State Party of the provisions of the Convention<sup>(61)</sup>.

It is as though Rabia was referring to the Libyan proverb which states that "whoever gives you a rope, let them be tied with it." Since the State had ratified the Convention, it is the right of disabled persons to petition the State to achieve better protection, although it is not clear whether Libya had ratified the Protocol. Indeed, the laws ratified in the Convention refer to the Protocol in the Preamble, but they do not refer to it in its Articles; they limit ratification to the Convention only. Because the Protocol is complementary

61 Article (3) stipulates that "the Committee shall bring any communications submitted to it confidentially to the attention of the State Party. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State». Article (4) "At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation." Article (6) "If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end submit observations with regard to the information concerned."[]"the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory."[] "After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations."[]"The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee." "Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings." Article (7) stipulates, "The Committee may invite the State Party concerned to include in its report under article 35 of the Convention details of any measures taken in response to an inquiry conducted under article 6 of the present Protocol." "The Committee may, if necessary, after the end of the period of six months referred to in article 6.4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry."

and optional, civil society in Libya needs to put pressure on the Libyan legislative branch to announce ratification of the Protocol pursuant to the provision of Article (13) of the Protocol.

Third: Mrs. Zeineb Mahmoud Al Fakhiri's (62) story sounds like a success story if we exclude the interview we had with her, which revealed the root of the problem causing her frustration. These include the lack of awareness among members of the society and the lack of urgency from the Government of the need to promote positive discrimination in favor of disabled persons and integrate them in public and private sectors. Zeineb's cause in the human rights area boils down to bringing disabled people's voices to the table of public and private stakeholders. She is currently thinking of establishing a disability study and research center, which will become a platform drawing upon studies, seminars, workshops and conferences to promote the rights of disables persons.

Zeineb maintained that the absence of architectural design suitable for disabled persons in public utilities and governmental departments such as ramps for wheelchairs and special parking spaces is an infringement of their legitimate rights. The lack of such services in public places is likely to push disabled persons to close in on themselves and withdraw from society, which will in turn aggravate their physical as well as their psychological suffering. Hence, they end up losing the ability to adapt and integrate in society.

<sup>62</sup> She had her hands amputated from birth in 1984. She graduated from the Department of Sociology at the Faculty of Benghazi. She became Administrative Officer at the General Administration of the General Services Office of the same university. She has been affiliated with the General Female Scout and Guide Movement in Benghazi. She is also Deputy Chairman of the Disabled Woman - the Benghazi branch - in the Libyan Union of disabled persons organizations. She is currently the Executive Director of Al-Mizen Association for the disabled, and Director of the Public Information Office of "Nismet Amal". She was the originator of a volunteering initiative called "University of Benghazi Environment for all" for disabled persons inside the university. She also holds the title of ideal Employee from the University of Benghazi in 2018.

Fourth: Men with disabilities are not absent from civil society work and the human rights sphere. One such person is Abdel Basit Al Aqori<sup>(63)</sup>, who has been working on one of the most important issues, namely education for visually impaired persons in Libya. In this regard, he cautioned that there are urgent implementation problems in Libya that need to be addressed.

This includes the need to create an office of education for special categories, which Abdel Basit considers to be a paradigm shift in Libya, although it came rather late and events did not allow the project to be carried out. The existence of such office has created double standards in this regard that need to be dwelt upon in order to clarify the powers of this office compared with those of the Department of Disabled Persons' Affairs attached to the General Social Solidarity Fund Authority that is authorized in accordance with the Benefits Report Regulations to supervise, inspect and monitor special education for all categories of disabled persons when they reach the age prescribed for schooling. <sup>(64)</sup>

Abdel Basit believes that the right to rehabilitation and the right to education are still not on the Libyan State's agenda, and that for more than fifty years their presence has been limited to two NGOs, Al Kafeef ("The Blind") in Benghazi and Noor ("Light") in Tripoli. Admittedly, despite the achievements made, the local sector will not stand up to the increasing needs of society for services based on material resources, equipment, human personnel and continuous development<sup>(65)</sup>. In Libya, governmental

<sup>63</sup> Visually impaired himself, he joined "Kafeef" Association in Benghazi. He studied Arabic language and literature at the University of Benghazi and was former teacher at the "Kafeef" School of Benghazi. He was also former Chairman for the cultural Services Office at "Kafeef", and editor-in-chief of the magazine Al Basira for the visually impaired of the Association using the Braille system. He is currently the Executive Director of the Libyan Organization for the Rights of Visually Impaired Persons.

<sup>64 &</sup>quot;Human Rights overviews (1-2): the visually impaired people and the right to education in Libya."

http://alwasat.ly/news/opinions/271489?author=1 (in Arabic)

<sup>65 &</sup>quot;Human Rights overviews (2-2): the visually impaired people and the right to education in Libya."

http://alwasat.ly/news/opinions/272312?author=1 (in Arabic)

and non-governmental disinterest in providing white canes for the blind has been noticeable and so is the lack of awareness about its importance or its internationally recognizable signals<sup>(66)</sup>.

### Conclusion

By way of conclusion, we will shed light on the main challenges and opportunities in the provision of better protection for disabled persons in Libya. The reality on the ground suffers from major constraints facing disabled persons such as:

- The absence of efficient complementarity between the Ministries of Health, Education and Social Affairs in meeting disabled persons' needs.
- The absence of unified legislation that includes all the provisions relating to disabled persons in Libya.
- Since 2011 and during the transitional phase, civilian tragedies have increased, particularly including those with disabilities of marginalized and vulnerable categories. Armed conflicts have increased the number of amputees suffering from mobility disabilities.
- Legislative discrimination between war disabled and otherwise disabled persons.
- Decision makers' failure to assess the importance of community participation; and it is ignored either during the legislative or implementation phase. This misjudgment can be considered one of the primary constraints to achieving better protection for disabled persons. Community participation involves the participation of disabled persons, stakeholders and those working in their field.

The reality in Libya offers a number of opportunities that may be drawn upon to achieve better protection for disabled persons. These include:

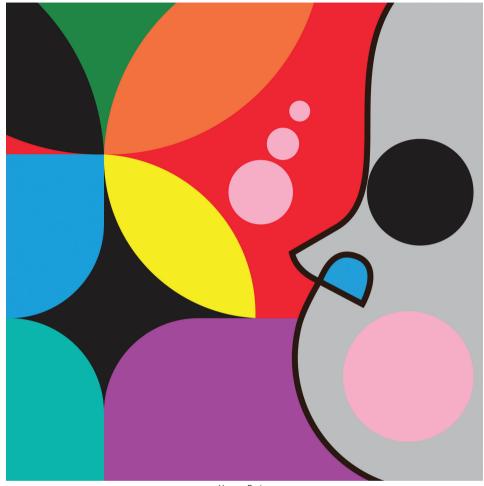
<sup>66</sup> These consist of two signals for crossing the street - the first signal is "Alone" and the second "Escorted" – and two signals for requesting a means of transportation – the third is "Private vehicle", the fourth "Public vehicle" and the fifth signal "Erectness"

- An extended and comprehensive definition of disabled persons in Libyan legislation.
- The huge resources at the Libyan State's disposal: In this regard, the World Health Organization Coordinator for Libya has criticized the State for disregarding disabled people's entreaties to establish special centers in Libya. He has also accused the State of squandering huge amounts of money for medical treatment abroad instead of saving that money to establish centers for the treatment of larger numbers of disabled persons.
- Premarital Medical examination: which aims at curbing the spread of certain hereditary and infectious diseases. There is the need to raise awareness among society of the suggestion to impose this examination before marriage, particularly when one considers that a committee in the Ministry of Health was created for this purpose and waits to be operationalized as soon as possible.
- Civil society: contributes to supporting disabled persons' families who bear the burden of raising their children in the absence of support or governmental services such as providing home-based care kits or equipped and dedicated educational and recreational centers. To note, civil society plays an important role in helping to change general societal attitudes and perceptions regarding disabled people.

The following are a number of legislative and implementational proposals aiming at improving the situation of persons with disabilities in Libya:

- Constitutional inclusions should be more forceful and binding for the State with regard to the protection of disabled persons. Attention must also be given to procedural criminal rules expressly providing for the establishment of special detention centers for disabled persons, and granting them decent, humane and healthy detention conditions.
- Ensuring that electoral laws allocate a specific share to disabled persons to empower them politically and put an end to legislative and implementational distinction between war disabled and people who are or become disabled for any other reason.

- The Libyan Criminal Code should stipulate that a victim's disability should be a compelling reason for stricter punishment for criminal acts against life and physical integrity and financial abuse offences. Attacks against disabled persons during armed conflicts, emergencies and catastrophes should also be criminalized.
- Amendment of Law No. 10 of 2013 relating to discrimination should expressly provide for the criminalization of discrimination on the basis of disability and the criminalization of persecution by reason of belonging to the disabled persons group.
- Consideration is to be given to documentation and archiving and efforts must be made to build an updated database on the population of disabled persons, which should make it possible to address their situation and propose visions to improve it.
- The post-war reconstruction of Libya needs to be achieved according to an architectural vision that respects everyone including disabled persons.
- The Ministries of Education, Social Affairs and Health should work according to integrated plans and cooperate with each other to provide the best protection to disabled persons.
- Intensify cultural and media efforts to overcome the stereotypical view of people with disabilities held by the general Libyan public.



Younes Bariaz

## Crisis of Children's Rights in Libya: a Legislative Chaos and Unchecked Gross Violations

Ragab Saad Human Rights Researcher and Consultant

### Introduction

In the wake of a transitional period of nearly ten years, and in the aftermath of a promising revolution, Libya has fallen short of building a democratic state that respects and protects human rights. Instead, it has become a country torn by political divisions and armed conflicts, and fraught with militias and violent extremist organizations. It has also fallen prey to gross violations of human rights and rampant impunity, amid the failure of vulnerable state institutions to enforce the rule of law. While the international community has not succeeded in managing the peace and political reconciliation efforts, it seems that the local parties to the conflict are riding roughshod over the country's stability; and are not concerned with the deterioration of the humanitarian and economic situation. Even worse, many regional and international actors are becoming increasingly involved in the contest to support the parties involved in the conflict and engaged in a war whose end does not seem imminent.

There are no official statistics providing accurate figures about Libya's population and the number of children in this country. Nonetheless, some estimates suggest that Libya has a population of 6,885,000 people<sup>(1)</sup>. In 2008, the United Nations Population Fund (UNFPA) estimated that the number of children under the age of 14 is 27.8% of Libya's population<sup>(2)</sup>. According to a report by the International Organization for Migration (IOM) issued in April 2020, there are 625,638 migrants in Libya, with 7% of those being children, of which a quarter of whom are unaccompanied<sup>(3)</sup>. Libya, a country reputed for its huge oil reserves and for the geographical role it plays as both a destination and transit point for migrants, is battered by a severe economic crisis resulting from the persistence of armed conflicts, as well as the impact of the outbreak of the coronavirus pandemic on economic

<sup>1</sup> Worldometer, August 2020.

https://www.worldometers.info/world-population/libya-population/

<sup>2</sup> Libya's page on the UNFPA's website. Date of visit: August 24, 2020. https://www.unfpa.org/data/LY

<sup>3</sup> Libya's migrant report, International Organization for Migration, (March - April 2020). https://migration.iom.int/reports/libya-%E2%80%94-migrant-report-30-march-april-2020

activities<sup>(4)</sup>. In this respect, a Libyan human rights group concerned with immigration issues, cautioned against the transformation of Libya into a source of migratory flows, due to the deterioration of the economic, political and security situation. The group has noticed that the number of Libyan migrants leaving the country to reach European shores by boat has considerably increased<sup>(5)</sup>.

Exploring the situation of human rights in Libya against this complex backdrop becomes concomitant with the immersion in accumulated cases of various gross violations of human rights. When it comes to the nature of infringements perpetrated on children and the child protection system, the matter becomes even more tragic. This paper will investigate the situation of the rights of children in Libya, by shedding light on the child protection system in Libyan legislation, the position of Libya regarding relevant international treaties and conventions, and the degree of compliance with international obligations related to the protection of the child. It will also present some examples of gross violations against Libyan migrant, refugee and asylum-seeking children.

In its desk research, the paper has essentially invoked the Convention on the Protection of the Child, the Libyan legal instruments, Libya's reports submitted to the Committee on the Rights of the Child, the concluding observations issued by the Committee on the Libyan second periodic report, and the Committee's general comments related to the Convention's articles. The paper has also drawn upon the reports issued by the UN Secretary-General, the United Nations Support Mission in Libya (UNSMIL), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the special rapporteurs, the UN Task Forces and international organizations concerned with human rights and the rights of children and refugees, in addition to the reports of some international and Libyan human rights groups.

<sup>4</sup> Libya: Economic Prospects. April 2020. The World Bank. April 16, 2020. https://www.albankald-awli.org/ar/country/libya/publication/economic-update-april-2020

<sup>5</sup> Libya: from a Country of Transit to a Country of Origin for Irregular Migration – Justifiable Concerns. Human Rights Group for Migration. August 13, 2020. https://hrsly.com/?p=5131

Additionally, the author has conducted an online interview with two defenders of the rights of children in Libya and a former female resident of a Libyan orphanage. He also interviewed a Libyan human rights defender living in Tunisia, as well as a UNICEF staff member. The quasi-continuous power outage in some Libyan cities precluded the interviews expected to be carried out with other human rights defenders via the internet..

The first part of the paper will present a brief overview of the child protection system in Libyan legislation. The second will focus on the gross violations of the rights of children in Libya committed by parties involved in the conflict and their allied forces. Finally, the paper will present its findings.

### Overview of the Child Protection System in Libyan Legislations

### Libya ratified:

- The Convention on the Rights of the Child in April 15, 1993, without reservations.
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in June 18, 2004,
- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in October 29, 2004.
- The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, in May 15, 1970,
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in May 16, 1989,
- The Convention on the Elimination of all Forms of Discrimination against Women, in May 16, 1989,
- The Convention on the Elimination of all Forms of Racial Discrimination, in July 3, 1968,

- The ILO Convention 182 on the Worst Forms of Child Labor, and the immediate and effective measures to prohibit and eliminate them,
- The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in June 18, 2004.

However, Libya still refuses to ratify the International Convention Relating to the Status of Refugees and its 1967 Protocol.

At the regional level, Libya ratified:

- The African Charter on the Rights and Welfare of the Child, in September 23, 2000,
- The Arab Charter on Human Rights, in August 7, 2006.

In the following, we will examine some issues raised in the concluding observations of the Committee on the Rights of the Child, concerning the last periodic report submitted by Libya to the Committee. Many of these observations are still valid despite the passage of time and the change of political regime after the 2011 revolution. We will also succinctly address the child protection system in Libyan legislation, through briefly tackling the Children's Protection Law and other relevant legal materials. The aim is to explore to what extent the child enjoys, in Libyan legislation, the right to nationality and the protection from discrimination, violence and sexual exploitation. The paper will also address the issue of juvenile criminal justice and the rights of migrant, refugee and asylum-seeking children.

### 1. Libya before the Committee on the Rights of the Child

On July 4, 2003, the Committee on the Rights of the Child rendered its concluding observations about Libya's second periodic report. The CRC urged Libya to take the necessary actions to adopt one integrated law on the rights of the child, which can provide a comprehensive legal foundation at the local level, with a view to implementing the provisions of the Convention<sup>(6)</sup>. The Committee also requested that measures be put

<sup>6</sup> Committee on the rights of the child, Thirty-third session, CRC/C/15/Add.209, para. 8, 4 July 2003.

in place to harmonize religious interpretations with fundamental human rights. In its second periodic report, Libya recalled that Article 82 of Act N° 17 of 1992, regulating the situation of minors, stipulates that: "The most appropriate principles of Islamic law shall apply in matters of guardianship, trusteeship and custodianship in cases where this Act makes no special provision." Libya, however, referred to the Act as; "implementing the most appropriate principles of Islamic law in the best interests of the child."<sup>(7)</sup>

Although Libya was one of the signatories without reservations to the Convention on the Rights of the Child, the second periodic report submitted to the Committee on the Rights of the Child stated that "there are no inconsistencies between the Convention and the national legislation, except that Article 21 of the Convention provides for adoption, which is prohibited by the Holy Koran and is consequently not decreed by the Islamic Sharia. Instead of adoption, the national legislation provides for fosterage and hosting". The periodic report added that adoption is not permitted by the legislative enactments in the (Libyan) Jamahiriya, "as it is prohibited by the Koran" (8). However, in its combined third and fourth report, Libya explained in further detail the way to apply Kafalah (fosterage) as an alternative to adoption, in implementation of Article 21 of the Convention (9).

It is worth noting that according to Article 44 of the Convention on the Rights of the Child, the State parties should submit to the Committee reports on the measures they have adopted which give effect to the rights recognized in the Convention and on the progress made on the enjoyment of those rights. The first report should be submitted within two years of the entry into force of the Convention for the State Party concerned, and every five years thereafter. Libya, on its part, submitted its first periodic report in 1995, then the second in 2000.

<sup>7</sup> Committee on the Rights of the Child. Consideration of Reports Submitted by States Parties. Second periodic reports of States parties due in 2000. Libyan Arab Jamahiriya. (Document CRC/C/93/Add.1 para 60). September 19, 2002.

<sup>8</sup> Ibid

<sup>9</sup> Committee on the Rights of the Child. Third and fourth periodic reports of States parties due in 2005. Libyan Arab Jamahiriya (Document CRC/C/LBY/3-4, para. 89-93. June 2, 2010.

The Committee on the Rights of the Child issued, on February 4, 1998, its concluding observations on the first periodic report submitted by Libya<sup>(10)</sup>, and its concluding observations on the second in July 4, 2003. It expressed, as regards to the second periodic report, its regret that Libya did not achieve noticeable progress, as many observations noted by the Committee on the first report were not addressed. Hence, the same observations were reiterated in the second report<sup>(11)</sup>. We will address the most significant observations at several points in this paper, for they are still in need of serious consideration by the Libyan authorities.

It is also worth mentioning that, in 2009, Libya submittedits combined third and fourth report, but the latter was not subject to discussion and the Committee did not offer any observations with respect thereto. In the aftermath of the 2011 uprising, the Libyan Ministry of Social Affairs expressed its desire to re-submit the above-mentioned combined report "reflecting a more accurate and reliable picture on the status of children's rights in Libya today. (12)" However, at the time this paper was written, the Libyan government has not yet submitted this report. Tarik Lamloum, the director of BELaady Organization for Human Rights, declared that they "have contacted the Libyan government and offered cooperation to prepare the periodic report and submit it to the Committee on the Rights of the Child, but our proposition was not met with any response." He added that

"there is no genuine willingness to prepare and submit this report." (13)

### 2. A Law on the Rights of the Child without Sufficient Safeguards

Libya promulgated the Children's Protection Law (No. 5 of 1997), to ensure the implementation of the Convention on the Rights of the Child. The Law provides that the term "child" shall refer to children who are less

<sup>10</sup> Committee on the Rights of the Child. Concluding observations of the Committee on the Rights of the Child: Libyan Arab Jamahiriya. (Document CRC/C/15/Add.84). February 4, 1998.

<sup>11</sup> Any subsequent reference to the Committee's concluding observations will concern those on the second periodic report, as mentioned in the outset of this paper.

<sup>12</sup> UNICEF supporting the preparation of state & alternative reports to the Committee on the Rights of the Child. UNSMIL website. April 25, 2013. https://bit.ly/3kBWUA6

<sup>13</sup> Online interview conducted by the author with Tarik Lamloum, in July 22, 2020.

than sixteen years old, that society shall ensure the right to provide full shelter to children who have no caretakers, and that children of unknown parents shall be given first, middle, and last names, and shall be entitled to receive identity cards and passports. The Law also stipulated, inter alia, that primary education shall be compulsory, and made it incumbent on health facilities to provide necessary vaccines and vaccinations free of charge. It prohibited child employment in any work, unless it is for the purpose of teaching a craft, and having taken into accountthe child's wishes to do so. The Children's Protection Law also provided that a committee called the Higher Committee for Children shall be formed to prepare the plans and programs necessary to care for children andmonitor the authorities concerned with the implementation of the provisions of this Law. Finally, it stipulated that there should be annual allocations in the State's general budget to be spent on children's culture and to encourage writings and publications on childhood.

Nevertheless, a considerable number of institutions are not committed to implementing the texts of Act N°5 of 1997. For instance, although the said Act compels the State's institutions to recognize children of unknown parents, to grant them first, middle, and last names, as well as identification papers, and to provide full shelter to children who have no caretakers, we find that those who are responsible for welfare homes allegedly claim that the laws and regulations require them to refuse hosting children of unknown parents who are infected with HIV or Hepatitis. In fact, the legal materials that prevent orphanages from hosting children with communicable diseases have exempted those recently registered or referred by the judiciary<sup>(14)</sup>. Tarik Lamloum asserts that "the orphanages under the Ministry of Social Affairs are shirking their legal and humanitarian responsibilities towards these children. One of the consequences of such an act is that many of them remain undocumented in hospitals for years."

In September 2020, the journalist Hanan Elmgaweb posted on her Facebook page a distress call by a resident in one of Benghazi's orphanages, claiming that she is being ill-treated by the manager and called on authorities

<sup>14</sup> Thirty Libyan NGOs address seven questions to Libyan authorities on World Children's Day, November 2018. https://hrsly.com/?p=2797#\_edn5

to intervene and redress the violation. Hanan was subsequently surprised that the orphanage manager had published a post on Facebook attacking and accusing her of having escaped the orphanage, and that Hanan should return to it by force. Additionally, the manager revealed in the same post the name that Elmgaweb used to have in the orphanage, before moving to a foster family. Hanan had kept her former name private for many years before this manager violated her right to privacy and stigmatized her in public. As a response, Elmgaweb published a video commenting on the infringement<sup>(15)</sup>. The video went viral among human rights activists and defenders of children's rights, as this crisis highlighted the existence of violations of orphans' rights in Libya and the abuse they endure from officials supposedly in charge of providing them with 'care'<sup>(16)</sup>.

In an interview with Hanan, she disclosed another ordeal suffered by children of unknown parents which relates to identification papers. While Act N° 5 of 1997 compels the government to grant children of unknown parents first, middle, and last names, and provide them with identity cards and passports, Hanan, and many others like her, cannot until now acquire an electronic passport, because she needs to have a quadruple name. Such requirements saddle these children with more restraints and burdens, and deny them their right to equality, travel and the opportunity to work and study. It should be recalled in this respect that in order to break the impasse, in 2019 the head of the Civil Status Department issued a binding decision to add a fourth name in the identification papers of recently registered children. However, the decision had not been implemented throughout 2020 until the crisis between Hanan Elmgaweb and the orphanage became known and turned into a publicly debated issue, which prompted, according to Elmgaweb<sup>(17)</sup>, the Civil Status Department to issue a circular implementing the decision.

<sup>15</sup> Watch the video at the following link:

https://m.facebook.com/story.php?story fbid=2849515161938699&id=100006407284868

<sup>16</sup> For example, see the article by Zahraa Langui "On Injustice and Discrimination against Orphans and the Children of Marginalized Groups" (1-2). Bawabat Al-Wassat. September 16, 2020. https://cutt.ly/6hGQrXo (in Arabic)

<sup>17</sup> Interview with Hanan Elmgaweb on October 6, 2020.

It should also be noted that the Committee on the Rights of the Child criticized, in its concluding observations on Libya's second periodic report, what it described as the reliance of Act N° 5 of 1997 and other relevant Libyan legislations on an approach that cares more about the welfare of the child instead of their rights. The Committee expressed its concern that the State party does not appear to have fully considered the provisions of the Convention, especially its general principles, as reflected in Libyan legislation. It stated as examples the right to non-discrimination, the best interest of the child and the rights of juveniles. The Committee also reiterated that the general principle of the best interest of the child, provided in Article 3 of the Convention, was not expressly included in all the legislations related to children, and is not implemented in practice.

Besides, Article 81 of the Penal Code prohibits the death sentence for juveniles under the age of 18. The Personal Status Law N° 10 of 1984<sup>(18)</sup> also prohibits marriage for persons under the age of 20. However, because of political divisions, the provisions of this law are applied only in the eastern part of the country, while they were amended in the west under Law N° 14 of 2015, which lowered the minimum age of marriage to 18. According to Article 6 (2) of this Law, "the 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."<sup>(19)</sup> This amendment may explain the increase in the cases of underage marriage. In this regard, a host of jurists and human rights activists noticed that "underage marriage rates are soaring in recent years,<sup>(20)</sup>" in addition to the existence, according to some reports, of cases of child marriage in some rural and desert areas<sup>(21)</sup>.

A governmental committee was formed on October 25, 2018, pursuant to the Presidential Council's decision N° 1441/2018, with a membership that involves all the ministries and organizations defending children's rights. The committee's purviews include developing the State's public policies and

<sup>18</sup> Law No. 10 of 1984

<sup>19</sup> Article (6) 2 of Law No. 14 of 2015

<sup>20</sup> Jazia Djibril Mohamed and Marwen Tacheni. Underage Marriage in Libya: A society that ignores it and a legislation that does not provide protection and safeguards (in Arabic).

<sup>21</sup> The 2019 Report on human rights in Libya by the US Department of State. Page 24.

strategic plans in child-related fields. It announced that it was compiling a comprehensive bill for children, which is "compatible with the Convention on the Rights of the Child, ratified by the Libyan State since 1993, without prejudice to Islamic law, the culture and the customs of Libyan society." This bill has not yet been announced, and there is insufficient information about the committee's activities and whether it is drawing upon the opinions and expertise of Libyan civil society organizations (CSOs) working on children's rights. In addition, the human rights defenders interviewed have no tangible information on the performance of this committee, with some of them having not even heard of its existence. This underscores the committee's poor communication with the CSOs concerned with children's rights and its reluctance to consult with them. The committee has also failed to conduct an extensive societal debate over its work, particularly the preparation of the unified comprehensive law on children's rights<sup>(23)</sup>.

## 3. Discrimination in Access to Nationality

The Committee on the Rights of the Child encouraged Libya<sup>(24)</sup> to undertake legislative amendments allowing Libyan mothers to transmit their citizenship to their children, regardless of the father's nationality. However, the Libyan legislative environment, among other rights, has continued to resist the consolidation of gender equality in terms of citizenship transmission to children. In fact, Article 6 of the Constitutional Declaration provides for gender equality before the law, and Article 11 of Act N° 24 of 2010 on nationality permits granting Libyan citizenship to the children of Libyan mothers married to non-Libyans.. In its report

<sup>22</sup> Coordinating Committee for the Preparation of a Comprehensive Draft Law for Children. Adala newspaper. February 26, 2020.

<sup>23</sup> The author spoke with one of the counsellors of the Ministry of Justice who is in charge of children and vulnerable groups. It was agreed to interview him about the activities of the governmental committee and to discuss the fate of the periodic report to be submitted to the Committee on the Rights of the Child, the Juvenile Draft Law and other issues related to paper's subject. After the agreement, the counsellor refrained from carrying out the interview.

<sup>24</sup> As stated in the introduction, the paper has essentially relied on the concluding observations on the Libyan second periodic report, made by the Committee on the Rights of the Child in 2003.

issued on July 22, 2015, the Working Group on Libya's Universal Periodic Review argued that the political and security upheavals are precluding the enactment of this implementing regulation<sup>(25)</sup>.

The experience of the post-revolution period shows that Libyan culture and traditions constitute an intractable hurdle to implement gender equality. For example, although one of the Constitution drafts issued in April 2016 recognized women's right to transmit citizenship to their children, the Constitution Drafting Assembly eventually bowed to pressures and deleted this reference in its final draft, issued in 2017. It is also worth noting that Article 27 of the Constitution draft compels the State to protect children, while Article 52 provides for the right to education and makes it compulsory until the age of eighteen. It also stipulates that the State should ensure that education is free to citizens at all stages of public education institutions. The Constitution draft also devoted Article 59 to the rights of the child and compels the State to take all measures for children to fully enjoy their rights and protect them from conditions that endanger their interests, education and growth. It also provides that the State should base its legislations and policies on the best interests of the child. The aforementioned legislations signal the willingness of the Constitution Drafting Committee to provide constitutional safeguards to protect the rights of the child. However, the fate of the Constitution is still unknown, considering the deep-seated political fractures. There is also the possibility of establishing another committee to draft a new constitution, in addition to concerns about the weakness of safeguards related to the protection of rights and freedoms in the draft constitution<sup>(26)</sup>.

Amel Majed Ali, of the organization I am a Libyan Woman, but My Son is a Foreigner declared that she contributed to drafting the article included in the 2016 draft constitution, recognizing Libyan women's right to transmit Libyan citizenship to their children. She said she was deeply shocked after

<sup>25</sup> Report of the Working Group on Libya's Universal Periodic Review. (Document A/HRC/30/16, para. 99. July 22, 2015).

<sup>26</sup> Rajab Saad. Libya is not Ready for Peace: the Absence of Consensus Exacerbates the Crisis and the Constitution is in a state of Limbo (in Arabic). Riwaq Arabi. May 17, 2019.

the article had been deleted from the final draft<sup>(27)</sup>. Ali asserted that not only are the children of Libyan women married to foreigners, deprived of their right to enjoy their mothers' citizenship, but the scope of discrimination against them also extends to having been denied the right to education for a long period. But thanks to the pressure exercised on the Ministry of Education by the organization and other defenders of children's rights, the Ministry issued a decision in September 2019 authorizing the children of Libyan women married to foreign nationals to enroll in schools. Moreover, in case the mother dies, her children cannot renew their residencies and are requested to leave the country. Amel Ali continued to say that thanks to her experience and regular contact with Libyan officials, she noticed a resistance to grant these children the right to access to nationality, under the pretext of concerns related to national security. She maintained that the discriminatory practices resulting from marrying a foreign national are not only limited to depriving the child from several rights, but the mother is also punished by denying her the right to obtain a passport and the right to vote.

Furthermore, untold numbers of children in south Libya run the risk of statelessness. Many of those belonging to minorities living in the Libyan Sahara were deprived of obtaining "any official papers multiple times, and a large number of them might be stateless." The absence of official documents may bring about discrimination and denial of full citizenship and basic services.

Hassan Kadano, a researcher in the Cairo Institute for Human Rights Studies, noted that since the 1980s, the South has been experiencing a pressing crisis with regard to stateless children. The children of Tuaregs returning from Niger and those of Ouled Slimane tribes returning from Chad were all deprived of the right to citizenship and the right to equality with other Libyan citizens. They were denied their future right to elect and to be elected when they reach adulthood, and not even the right to obtain a passport. The first generation among them were allowed to enroll in schools up to general secondary education, and a few of them were able to attend

<sup>27</sup> Online interview with Amel Majed Ali on October 1, 2020.

<sup>28</sup> Laura van Waas. The Stateless Tebu of Libya? https://cutt.ly/9hGIqwS https://bit.ly/32QQerE

college. After the revolution, newborn children were not able to enroll in primary schools because they did not have a citizenship number. Kadano added that "the Libyan authorities are utterly reluctant to resolve the crisis of returnees' children; on the contrary, the State believes that addressing this crisis may engender demographic changes and certainly poses a threat to national security.<sup>(29)</sup>" It should be noted that the children of Tebu tribes in the South had similar issues but were able to resolve them by having recourse to justice.

# 4. Restrictions on the Rights of Minorities to Express their Identities

The Committee on the Rights of the Child had expressed its deep concern about not including the values of respect of human rights, tolerance, gender equality and equal rights for all religious and ethnic minorities in the educational curricula in accordance with the aims of education provided for in Article 29 of the Convention. Taking into account the General Comment No. 1 (2001) on Article 29 (1) of the Convention (aims of education), the values embodied in the said article are relevant to children living in zones of peace, but they are even more important for those living in situations of conflict or emergency. The Dakar Framework for Action, adopted in the World Education Forum in April 2000, supports this approach on educational systems in conflict zones, which particularly applies to the situation in Libya, which is currently shattered by conflict.

In its second periodic report submitted to the Committee, Libya denied the existence of minorities in the country and maintained that "the Libyan society is an Islamic Arab society, which has no minorities. All citizens are Arabs who profess Islam and speak the Arabic language." In fact, Libya resorted to the same allegations in its reports to other international committees. For instance, the Committee on the Elimination of Racial Discrimination in its commentary on the Libyan government's report, took note again of the discrepancy between the assessment of the State party, according to which the Libyan society is ethnically homogenous, and the information indicating that Amazigh, Tuareg and Black African populations

<sup>29</sup> Interview with Hassan Kadano on August 25, 2020

live in the country. It also noted that, according to some information, there is no recognition of Amazigh language and culture in the Libyan Arab Jamahiriya, and Amazighs are impeded from preserving and expressing their cultural and linguistic identity<sup>(30)</sup>.

Following the revolution, the Constitutional Declaration promulgated in 2011 stipulated in its first article that Arabic is the official language of the country, and the State should guarantee the linguistic and cultural rights for the Amazigh, Tebu and Touareg populations, and all other components of Libyan society. The General National Congress then enacted Law N° 18 of 2013 on the rights of cultural and linguistic components, stipulating in its first article that "The Amazigh, Tuareg, and Tebu languages shall be considered linguistic and cultural components of Libyan society". In the same vein, Article 2 guaranteed the right of all linguistic and cultural components to learn their language as an optional subject within the educational curriculum adopted according to the laws and regulations in force, both in schools located in their local areas and elsewhere. Article 3 compelled the Ministry of Education to provide all the necessary capabilities to execute this law.

Article 3 of Law N° 24 of 2002, on the prohibition of the unauthorized use of languages other than Arabic in all transactions, provides that "the use of non-Arabic, non-Islamic names is forbidden, along with Arabic names not sanctioned by Islam and names that have a particular significance that is not in accord with the spirit of Islam and the identity of the Libyan people".

Anyone who violates Article 3 of this law is penalized with a fine not exceeding five thousand LYD in addition to barring the perpetrator's children, who bear names contrary to this law, from registering in educational institutions until the violation is corrected. This is in direct contravention of Article 30 of the Convention on the Rights of the Child<sup>(31)</sup>.

<sup>30</sup> International Convention on the Elimination of all Forms of Racial Discrimination, (CERD/C/64/CO/4), May 10, 2004.

<sup>31</sup> Article 30 of the Convention on the Rights of the Child stipulates that "in those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own

The issue of registering non-Arabic and non-Islamic names remains contentious within Libyan society. A Libyan citizen has recently contacted Dar al-Ifta (Fatwa Council) seeking its opinion about giving his daughter the Amazigh name Massilia<sup>(32)</sup>. From the legislative perspective, Hassan Kadano asserted that in promulgating Law N° 18 of 2013, the Libyan legislator should have abrogated Article 3 of Law N° 24 of 2002 and eliminated the list of prohibited names prepared by the Academy of Arabic Language. He added that, in practice, the Civil Status Department is recently registering non-Arabic and non-Islamic names for newborns, because "the current Head of Department is allowing for some flexibility in this regard." Kadano also exhorted the Head of Civil Status Department to make communication efforts with the legislators, in order to amend Law N° 24, because the names of the people registered during his mandate "are contrary to the Law", and these people may be faced with legal problems in case the following Head of Department decides to implement the said law as it stands.

It is worth noting that Law N° 24 has elicited a large debate within Libyan society, forcing the secretariat of the General People's Committee (GPCO) to rescind, in 2007, its Decision N° 98 on establishing a commission to determine alist of Arabic and Islamic names. The GPCO therefore issued the Decision N° 3 of 2007, enacting certain provisions in the implementation of Law N° 24, to allow for some flexibility in the registration of names expressing the national local culture, including Amazigh and Tuareg names, while emphasizing the prohibition to register, in the Civil Registry, names expressing beliefs and symbols that are contrary to Islamic values, such as "Abu Jahl" or "Mosyalima" (33). This may explain the "flexibility" of the Head of the Civil Status Department, above-mentioned by Hassan Kadano, and may indicate the obstinacy of other officials who intentionally ignore the very existence of that decision when performing the duty of registering baby names. At all events, the Libyan legislator should review Law N° 24 in accordance with the international standards of children's rights,

religion, or to use his or her own language".

<sup>32</sup> Interview with Hassan Kadano.

<sup>33</sup> Lifting the Restrictions on non-Arabic Names in Libya (in Arabic). Archives of Libya the Future website. January 12, 2007. Date of website visit: August 25, 2020. https://bit.ly/35WNjzt

and abrogate all the legislations and provisions that discriminate against minorities or constitute an arbitrary limitation on the right of citizens to choose their children's names.

## 5. Juvenile criminal justice

Article 40 (3) of the Convention on the Rights of the Child provides for "the establishment of a minimum age below which children are presumed not to have the capacity to infringe the penal law". It also provides for taking, "whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected". Besides, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) recommends that the beginning of the age of criminal responsibility for juveniles should not be fixed at too low an age level<sup>(34)</sup>. In this respect, the Committee on the Rights of the Child concluded in its General Comment N° 10 (2007) concerning children's rights in juvenile justice, that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee "not to be internationally acceptable." (35)

In the same vein, Article 80 of the Libyan Penal Code stipulates that "a juvenile who has not attained the age of 14 years shall not be held criminally responsible", and that the judge may take "the necessary protective measures on his behalf if he has completed the age of seven years at the time of the commission of the act that is deemed an offence by law". Although the law expressly states that criminal responsibility begins at the age of fourteen, the nature of the protective measures a judge can take against children aged between seven and fourteen, and whether such measures include custodial penalties, remains utterly vague.

<sup>34</sup> See the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) at the following link: https://www.ohchr.org/AR/ProfessionalInterest/Pages/BeijingRules.aspx

<sup>35</sup> General Comment  $N^{\circ}$  10 (2007) concerning children's rights in juvenile justice. (Document CRC/C/GC/10). April 25, 2007.

Libya had stressed in its second periodic report to the Committee on the Rights of the Child that if a minor over 7 and under 14 years of age perpetrates an act which is regarded as an offence in law, they are not held criminally liable, a point which is corroborated by the 2008 report of the National Experts Panel. The experts maintained that the Libyan legislator sought to rule out criminal liability for anyone under the age of fourteen, the irrebuttable presumption being that no one at that early age is endowed with the capacity of discernment or exercising willpower. They also underscored that no measures should be taken against a minor under the age of seven<sup>(36)</sup>. However, the Committee was concerned in its concluding observations that the de facto age of criminal responsibility of 7 years is much too low. When asked about this point, Tarik Lamloum, the director of BELaady Organization for Human Rights, stated that "this point is specifically contentious, but whatever the law stipulates, we see in reality dozens of children under the age of ten incarcerated in prisons and detention centers. Even if they are not tried and sentenced, they are placed in the State's detention facilities for long periods".

Besides, the Committee deprecated the conditions in detention for juveniles in Libya, including pre-trial detention. It noted that Libya has not sufficiently taken into consideration the holistic approach to addressing the problem of juvenile crime (for example, addressing underlying social factors), advocated in the Convention. The Committee also invited Libya to ensure that its system of juvenile justice fully includes the provisions of the Convention, as well as other relevant international standards in this area. It recommended that the State party ensure that persons under 18 are not detained with adults, not tried as adults, and are not denied access to legal aid.

Concerning penalties for juvenile offenders, Article 81 of the Penal Code provides that a juvenile who at the time of commission of the offence is older than 14 years may be held criminally responsible, but the penalty shall be reduced by two thirds. If a juvenile who is criminally responsible commits an offence, the penalty for which is death or life imprisonment, then these

<sup>36</sup> A study on the juvenile justice system in Libya. National Experts Panel, 2008. Available (in Arabic) on the Ministry of Justice website. www.aladel.gov.ly

penalties should be commuted to a penalty of imprisonment of not less than five years and the sentence shall be served in a special establishment for criminally responsible juveniles, where they will be subject to a special rehabilitation regime. Article 82 stipulates that the judge should only impose the minimum penalty.

If a juvenile under the age of 14 years commits an act deemed an intentional felony or misdemeanor by law, Article 151 of the Penal Code provides that the judge should order that the juvenile be treated in a legal reformatory or that he be released under supervision. Order for supervision should only be made if it is possible to execute the order by handing the juvenile over to his parents or to those charged with his education and care, or by handing him over to a social assistance institution. The previous provision also applies to a juvenile who has completed 14 years of age but who has not completed the 18 years, if it is proved that he did not have the capacity of conscience and volition. Article 98 stipulates that the provisions on recidivism should not apply to juveniles who have not reached the age of 18.

When sentencing a penalty of detention against juveniles less than 18 years of age for a period of more than two years, Article 112 of the Penal Code authorizes the court to order suspension of the penalty for a period of five years starting from the day that the sentence becomes final. If a juvenile under 18 years of age commits an offence punishable by a custodial penalty not exceeding two years or by a fine not exceeding 50 LYD or by both penalties, Article 118 provides that the judge may grant him a judicial pardon. The offence should be extinguished once the pardon order becomes final. The same Article establishes conditions to grant judicial pardon, which may not be applied to a juvenile who has previously been convicted of a felony, and pardon may not be granted more than once. In order to grant pardon, the court should be led to believe that the offender will not commit other offences, according to Article 113 of the Penal Code.

Furthermore, Articles 316 through 326 of the Code of Criminal Procedure regulate the prosecution of juveniles. They provide for the establishment of a Juvenile Court whose competencies include trying minors who have passed the age of fourteen but have not yet reached the age of eighteen, and prosecuting homeless juveniles. The Code of Criminal Procedure also

provides for the investigation of the reasons motivating the juvenile to commit offenses, by seeking the assistance of a doctor or other experts; and stipulates the presence of a lawyer in case of criminal prosecution.

While the aforementioned report of the National Experts Panel noted that the Libyan legislature showed interest in providing a legal umbrella to protect juveniles, at the same time it stressed the legislator paid no heed to the implementation of the community service systems as an alternative penalty, or the establishment of juvenile institutions. It also stressed the need to adopt a clear classification for the types of preventive measures, whether educational or corrective, which would facilitate their enforcement and deter the "suspicion of impartiality or misjudgment". In this regard, the report noted that because of the scarcity of alternative measures, the court usually resorts to place minors in education and guidance centers that lack rehabilitation programs, which ultimately does not serve the purpose of reform and social reintegration.

Furthermore, the experts' report emphasized that the judges working in juvenile courts are not specifically trained for juvenile justice, and cautioned that in practice, some legal provisions are not implemented. For instance, it is within the competence of the juvenile judge to supervise the enforcement of sentences, and it is essential to follow up and monitor the progression of the minor's conduct, which allows for bringing them before the court again and reviewing their sentence. Moreover, there is a failure to fulfil the requirements of the provisions set forth in the Code of Criminal Procedure on the conditional release of a minor after they have completed three quarters of their prison term; provided their conduct in prison inspires trust and good behavior. The report also underscored that the Code of Criminal Procedure lacks special provisions regarding law enforcement in the juvenile justice system, as the minors may be treated like adults during arrest and detention. Finally, in order to implement the principle of the best interest of the child, the experts recommended the enactment of legislation on juveniles that overcomes the limitations of existing laws.

The experts' report includes a bill on juveniles that incorporates into a single law all the legislation in force which are consistent with the international and regional variables and instruments, in response to the best interest of

the child. The Libyan Ministry of Justice published the bill on its website, without clarifying the Ministry's vision or referring to discussions about this law with Libyan authorities and human rights organizations in Libya and abroad, such as UNICEF. The Ministry did not refer to the prospects of its adoption, nor to the role of the Higher Committee for Childhood Protection in this regard.

It is also worth noting that in November 2018 on World Children's Day, 30 Libyan organizations issued a joint report detailing a number of violations of the rights of juveniles in some Libyan cities including Tripoli, Benghazi, Bayda and Soussa. The report indicates that the juveniles are treated like adults from the moment they are arrested, and even, in the absence of juvenile centers, during their detention and placement in prisons and camps<sup>(37)</sup>. In this respect, it is noticeable that the concerned international organizations and bodies did not issue reports on the situation of juvenile offenders in Libya, and that the compliance, or non-thereof, of Libyan authorities to the international standards of juvenile prosecution is not sufficiently examined. Although a huge number of reports on human rights in Libya have seen the light of day in recent years, the juveniles do not enjoy the necessary focus on their situation and on the violations committed against them.

# 6. Sexual Violence and Exploitation

Article 19 of the Convention on the Rights of the Child stipulates that the States Parties should take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, and maltreatment or exploitation, including sexual abuse. According to Article 34 of the Convention, the States Parties should undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties should take all appropriate national, bilateral and multilateral measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity, and the exploitative use of children in prostitution or other unlawful sexual practices.

<sup>37</sup> Thirty Libyan NGOs address seven questions to Libyan authorities on World Children's Day, November 2018. https://hrsly.com/?p=2797#\_edn5

The Committee on the Rights of the Child, in its General Comment N° 13 (2011) concerning the right of the child to freedom from all forms of violence, emphasized that "the interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence"<sup>(38)</sup>. It added that this interpretation "cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity". The Committee urged States Parties, as a matter of urgency, "to enact or repeal their legislation as necessary in order to prohibit all forms of violence, however slight, within the family and in schools, including as a form of discipline"<sup>(39)</sup>.

Under the community acceptance in Libya and other countries of corporal punishment within the family as a form of discipline and education, we have to invoke the General Comment N° 8 (2006) of the Committee on the Rights of the Child concerning the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment. The Committee noted that addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family and in schools, is a key strategy for reducing and preventing all forms of violence in societies<sup>(40)</sup>.

In the Libyan legislation, Act N° 17 of 1992, stipulates that the right to guardianship of minors is forfeited if the guardian ill-treats the minor or misuses the rehabilitation and education methods. Although Libya prohibited corporal punishment in schools, which is welcomed by the Committee on the Rights of the Child in its concluding observations on the Libyan second periodic report, a UNICEF report published in

<sup>38</sup> General Comment N° 13 (2011) of the Committee on the Rights of the Child concerning the right of the child to freedom from all forms of violence. (Document CRC/C/GC/13). April 18, 2011.

<sup>39</sup> Committee on the Rights of the Child. Committee's day on violence committed against children within the family and in schools. The Committee's report on its Twenty-eighth session. September-October 2011. (Document CRC/C/111).

<sup>40</sup> General Comment N° 8 (2006) of the Committee on the Rights of the Child concerning the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment. Articles 18 (2), 19 and 37, among others. (Document CRC/C/GC/8). August 18, 2006.

1992 noted that this type of punishment is still practiced. Besides, the Committee expressed its concern in its concluding observations about the lack of adequate information on the true situation in Libya regarding the ill-treatment of children within the family. In 2017, a study on violence against children in Libya published by UNICEF in partnership with the National Center for Disease Control, concluded that 90% of boys and 88% of girls reported being subjected to some form of violence at home and in school<sup>(42)</sup>.

Furthermore, Articles 407, 408 and 409 of the Libyan Penal Code provide for the punishment of different forms of sexual exploitation of children. Article 407 stipulates that anyone who has sexual intercourse with a minor by force, or even with the minor's consent is punished with a penalty of imprisonment not exceeding ten years. If the victim is a juvenile who has completed fourteen years and not yet completed eighteen years, the penalty is imprisonment for a period not exceeding five years. Additionally, Article 408 punishes anyone who commits indecent assault on a person under the age of fourteen years by imprisonment not exceeding five years. If the victim is between fourteen years and eighteen years of age, the penalty is imprisonment for a period of no less than one year. As for Article 409, it provides that anyone who incites a minor under the age of eighteen to commit indecent acts or assists, enables or facilitates the minor in any way to commit a lewd act or commits the same in front of the minor is punished by detention (without specifying the duration of detention). The penalty is doubled if the offender is an ascendant of the victim; or entrusted with the education or supervision of that person.

Article 415 punishes anyone who lures a juvenile into prostitution by a penalty of detention for a period of no less than one year and a fine not exceeding LYD 200. The penalty is doubled if the act is committed against a person under the age of fourteen. Furthermore, Article 416 punishes anyone

<sup>41</sup> Judicial System Holds Important Role in Upholding Children's Rights and Ensuring their Best Interest. UNICEF. April 21, 2013.

https://cutt.ly/6hGQvJw

<sup>42</sup> Mainstreaming Mental Health and Psychosocial Support in Education sector, UNICEF, 24 January 2020.

https://cutt.ly/ChGQTuV

who uses force to compel a juvenile to prostitution by imprisonment for a period from three to six years and a fine between LYD 150 and LYD 550. Furthermore, anyone who abducts a person for the purpose of committing lewd acts is punished, according to Article 412, by imprisonment. The penalty is increased if the act is committed against a person who has not passed eighteen years of age. On the other hand, Article 414 reduces by half the penalties set forth in Articles 411, 412 and 413 if the offender takes the initiative to restore the freedom of the person abducted before the commission of any lewd act. In addition, Article 36 of Act N° 17 of 1992, regulating the situation of minors and those of equivalent similar, punishes the offenses which involve having sexual intercourse with a minor by force, threats or deception; committing indecent assault on minors; inciting them to commit indecent acts; abducting them for the purpose of committing lewd acts; and luring or forcing them into prostitution.

Furthermore, Libya noted in its report submitted to the Committee on the Rights of the Child that "any Libyan outside the Jamahiriya who commits an act involving the sexual exploitation, abuse or debauchery of a child, or any other such act designated as criminal offence under Libyan law, is liable to punishment under the Libyan Penal Code, if the act in question was punishable under the law of the country in which it was committed"<sup>(43)</sup>.

Notwithstanding the clear stringency of the Libyan legislature towards some crimes of sexual exploitation against children, it is necessary to carry out several amendments and put in place an accurate classification of the forms of sexual abuse and harassment. The punishment should not only be limited to robust penalties for crimes of rape or sexual intercourse with the minor's consent, but must also be in line with international standards. After serious discussions with local and international children's rights organizations, such amendments may be conducted during the envisaged enactment of the Uniform Act for Children.

<sup>43</sup> Second Periodic Report submitted by Libya to the Committee on the Rights of the Child. (Document CRC/C/93/Add.1, para. 351). September 19, 2002.

This law should include the appropriate treatment of child victims of violence and sexual abuse as survivors, which requires putting in place rigorous conditions to preserve the confidentiality and privacy of children surviving incidences of sexual harassment, and to encourage them and their families to report violations without fearing societal stigmatization. It should also provide that the persons interrogating child survivors in order to obtain their testimonies be intensively trained by psychiatrists and experts in children's rights. The interrogators should be able to perform their duties by adopting the proper methods of dealing with traumatized children, and by avoiding psychological abuse that would exacerbate their feeling of stress and shame.

It may also be necessary that the law stipulates that schools as well as social and educational institutions should put in place policies against sexual harassment, whereby teachers and all the personnel dealing with children in those institutions receive rigorous instruction about the appropriate treatment of children. Besides, awareness campaigns for children should be organized to help them distinguish the misconduct committed against them within the family and in schools, sports and social clubs and other institutions. Written guidelines should also be distributed to children and their parents, explaining how to act and how to lodge complaints and report offenses in the event of any type of violence or sexual harassment.

# 7. Migrant and Refugee Children

Article 22 of the Convention on the Rights of the Child exhorts States Parties to take appropriate measures to ensure that a child who is seeking refugee status receives appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the Convention and in other international human rights or humanitarian instruments of which the said States are parties. Furthermore, Article 37 of the Convention guarantees that no child is deprived of his liberty unlawfully or arbitrarily. In case of his detention, it should only be used as a measure of last resort and for the shortest appropriate period of time, and he should be treated with humanity and respect for his inherent dignity. The said Article also stipulates that every child deprived of his liberty should have the right to prompt access

to legal and other appropriate assistance<sup>(44)</sup>. In its General Comment N° 6 (2005), the Committee on the Rights of the Child addressed the issue of the treatment of unaccompanied and separated children outside their country of origin. The Committee has also published two related general comments jointly with the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families<sup>(45)</sup>.

The Committee, in its General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, recalled that it is indispensable to carry out the assessment and determination of the child's best interests in the context of potential separation of a child from his or her parents. It stressed that "given the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, for example when the child is in danger of experiencing imminent harm". (46) It also emphasized in the same comment that the purpose of determining the best interests of a child or children in a vulnerable situation should not only be in relation to the full enjoyment of all the rights provided for in the Convention, but also with regard to

<sup>44</sup> It should be recalled that Libya is party to the International Covenant on Civil and Political Rights and its First Optional Protocol; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of all Forms of Discrimination against Women and its Optional Protocol; the Convention on the Rights of the Child and its two Optional Protocols on the involvement of children in armed conflict, and on the sale of children, child prostitution and child pornography; and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. 45 Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration (Document CMW/C/GC/3-CRC/C/GC/22), and later the joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return (Document CMW/C/GC/4-CRC/C/GC/23).

<sup>46</sup> The Committee on the Rights of the Child. General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Document CRC/C/GC/14, para.61).

"other human rights norms related to these specific situations, such as those covered in the Convention on the Rights of Persons with Disabilities, the Convention relating to the Status of Refugees, among others". We should recall, in this context, Libya's ratification of the Convention on the Rights of Persons with Disabilities, but its refrainment from adhering to the Convention Relating to the Status of Refugees.

Moreover, the UNHCR guidelines on the applicable criteria relating to detention, stipulate that "unaccompanied or separated children should not be detained [...] Detention cannot be justified based solely on the fact that the child is unaccompanied or separated, or on the basis of his or her migration or residence status". The Special Rapporteur on the human rights of migrants asserted that "migration-related detention of children should not be justified on the basis of maintaining the family unit (for example, detention of children with their parents when all are irregular migrants)". He also reiterated the conclusion of UNICEF that "detention of children will never be in their best interests." (48) Furthermore, the Recommended Principles and Guidelines on Human Rights and Human Trafficking recommended that trafficked persons should not be, in any circumstances, held in immigration detention or other forms of custody, and that children who are victims of trafficking should not be subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons<sup>(49)</sup>.

In its concluding observations on Libya's second periodic report, the Committee on the Rights of the Child expressed its concern that there is no Libyan legislation guaranteeing the protection of the rights of refugee children or children seeking refugee status. It called upon Libya to put in place an efficient legal framework to protect these children, in compliance

<sup>47</sup> Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention. The United Nations High Commissioner for Refugees. Guideline 2.9 related to children. https://www.refworld.org/docid/503489533b8.html

<sup>48</sup> Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante. Human Rights Council. Eleventh Session. (Document A/HRC/11/7). May 14, 2009.

<sup>49</sup> Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council. Substantive session 2002. (Document E/2002/68/Add. 1).

with Articles 2 and 22 of the Convention. It also recommended that the State Party consider ratifying the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, an international instrument to which Libya refuses to adhere.

However, Libya did adhere to the Convention Governing the Specific Aspects of Refugee Problems in Africa, which invited the African Union States Parties to ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Even more, this African Convention considers itself "the effective regional complement in Africa of the 1951 United Nations Convention on the Status of Refugees".

In practice, Libya is dealing with the issue of refugees with much sensitivity and does not recognize their existence (as refugees) in the country. A UNICEF staff member declared that "Libyan officials fear that the influx of refugees would lead to demographic alterations in the country. They perceive them as a threat to national security."(51) Although Libya is not party to the Convention on the Status of Refugees, the UNHCR had had an office and a working group in Tripoli for many years, before the Libyan government asked them to leave the country under the pretext that their activities in the country are illegal<sup>(52)</sup>. In the following year, in the aftermath of the revolution, the Constitutional Declaration was promulgated in which Article 10 provides that "the State shall guarantee the right of asylum by virtue of the law. The extradition of political refugees shall be prohibited". (53) About ten years later, the Libyan legislator has not enacted yet a law regulating the status of refugees. However, a Médecins Sans Frontières report noted that until October 2019, the UNHCR could "register asylum seekers and refugees from a limited number of countries." (54) A UNICEF staff member

<sup>50</sup> Article 8 of to the AUO Convention Governing the Specific Aspects of Refugee Problems in Africa.

<sup>51</sup> Interview with a UNICEF staff member who preferred to remain anonymous.

<sup>52</sup> The United Nations High Commissioner for Refugees seek dialogue with Libya to resume its activity. Swiss Info. June 22, 2010.

<sup>53</sup> This is clearly stated in Article 14 of the draft constitution of July 29, 2017, which has not been voted on as of the time of writing.

<sup>54</sup> Exploiting People's Suffering: Detention, Abuse and Ill-treatment in Libya. Médecins Sans Frontières. January 6, 2020.

affirms that there is an unwritten arrangement (or agreement) between the Libyan government and the UNHCR, allowing for the registration of some refugees from certain countries and some other countries' regions. (55)

With regard to legislation, two laws in Libya are invoked in relation to child migrants, refugees and asylum seekers: Law  $N^{\circ}$  6 of 1987 on organizing the entry, residence and exit of foreigners in Libya (amended by Law  $N^{\circ}$  2 of 2004), and Law  $N^{\circ}$  19 of 2010 on combatting illegal immigration.

Law N° 6 of 1987 criminalizes the irregular entry and stay in Libya. In this respect, Article 19 provides that anyone who enters, resides in, or exits the country without a valid visa is sentenced to imprisonment and fined. Article 20 also stipulates that anyone who violates any other provision of this Law is sentenced to imprisonment and fined. Notably, however, , Law N° 6 does not distinguish between irregular migrants, refugees, asylum seekers and child refugees, for they are all considered "foreigners".

When arresting illegal immigrants, Article 10 of Law N° 19 on combatting illegal immigration stipulates that they be treated in a humanitarian manner that preserves their dignity and rights. However, Article 6 of the said Law imposes on irregular migrants the penalties of detention with hard labor or a fine. A foreigner convicted of any of the crimes set forth in this Law is expelled from the Libyan territory immediately upon execution of the sentence. Furthermore, widespread violations of the rights of children, immigrants, refugees and asylum seekers are systematically taking place in Libya, and we will address later the infringements committed on these children while they are in the Libyan territory, or in their attempt to flee it.

<sup>55</sup> According to the UNICEF employee, who preferred remaining anonymous, these countries are: Syria, Yemen, Palestine, Somalia and Eretria, in addition to the refugees from Darfur and the Oromo people of Ethiopia.

# The Humanitarian Situation and Gross Violations during the COVID-19 Pandemic

Children who are in need of support, healthcare and clean drinking water continue to suffer every day. The persistence of armed conflicts, on the other hand, generates successive waves of internal displacement of civilians, in addition to a significant number of deaths and injuries, including children. For instance, in April 2020 UNICEF documented the displacement of 11,000 children from Sirte and Tarhouna, whilstover 100 bodies including children, were found in a hospital in Tarhouna due to the armed conflict in Western Libya<sup>(56)</sup>.

With the rampant COVID-19 pandemic, the crisis of children's human rights in Libya is further compounded. They have become more vulnerable and are facing greater risk, especially as a result of the continuing armed conflict, the local, regional and international parties to which are not concerned about the deterioration of the humanitarian situation and the various risks to which civilians, children in particular, are exposed<sup>(57)</sup>.

Furthermore, the stumbling refugee resettlement operations, the airspace shutdown and the restrictions on movement have resulted in depriving large numbers of migrants of job opportunities to provide food for their children and families. Additionally, migrants are not provided with sufficient medical supplies to take the necessary precautionary measures against the virus<sup>(58)</sup>. The pandemic has imposed further challenges and hardships on a healthcare system in tatters, which has dramatically impacted civilians. The health situation is even more dangerous for immigrants, particularly children, who

<sup>56</sup> UNICEF Libya Country Office Humanitarian Situation Report No. 2 April - June 2020, 4 August 2020.

https://cutt.ly/OhGQKZF

<sup>57</sup> On the first anniversary of Field Marshall Khalifa Haftar's offensive against Tripoli, the UN-SMIL reiterates the importance of cessation of hostilities and uniting against the coronovirus pandemic. UN News. April 4, 2020. https://news.un.org/ar/story/2020/04/1052732

<sup>58</sup> Aidan Lewis. Coronavirus narrows options for migrants buffeted by Libya's war. Reuters. May 8, 2020.

https://www.reuters.com/article/us-health-coronavirus-libya-migrants-idUSKBN22K1MP

have no access to proper medical care, even before the pandemic outbreak. Recently, the Global Health Security Index has added Libya to a list of 27 of the most vulnerable countries to emerging outbreaks<sup>(59)</sup>.

As briefly mentioned, arbitrarily detained migrant and refugee children are at greater risk of coronavirus transmission in detention facilities<sup>(60)</sup>. With the pandemic continuing to spread, UNICEF's greatest concerns are essentially for children in a country where armed conflicts are escalating, and where children's lives are at stake<sup>(61)</sup>.

Hereafter, we will succinctly tackle cases of gross violations perpetrated against children in Libya, as a result of the persistent armed conflict and the shelling of civilian-populated areas, schools and hospitals. We will also address the issue of abduction and extrajudicial killings of children, in addition to the recruitment of children and foreigners in the armed forces of the parties involved in the conflict. Finally, we will highlight the atrocities that migrant, refugee and asylum-seeking children are faced with.

<sup>59</sup> COVID-19: Identifying the Most Vulnerable Countries Using the GHS Index and Global Flight Data. The Global Health Security, March 12, 2020. https://cutt.ly/HhGQ2Yc

<sup>60</sup> Libya: Detainees at Risk of Coronavirus Spread. Human Rights Watch. March 29, 2020. https://www.hrw.org/news/2020/03/29/libya-detainees-risk-coronavirus-spread

<sup>61</sup> This virus makes it a double burden for children in Libya, Yemen and Syria. Euronews. April

<sup>22, 2020.</sup>https://cutt.ly/IhGWy4W

#### 1. Children under Bombardment

The recurrence of conflict, along with the offensive against Tripoli on April 4, 2019, brought about further deterioration of the humanitarian situation in Libya, and exacerbated the anguish of Libyan children as well as refugees and migrants. At the beginning of this year, UNICEF confirmed the injury and death of children in the indiscriminate attacks on populated areas, which resulted in the forced displacement of 90,000 children escaping death. These raids have also damaged dozens of healthcare facilities and forced many of them to close and suspend operations. Schools have also shut their doors, in the process depriving nearly 200,000 children of education. Indeed, the conflict has only intensified the risks that 60,000 refugee and migrant children face<sup>(62)</sup>. Despite repeated calls for a ceasefire for humanitarian reasons, hostilities continue unabated, and the international humanitarian organizations continue reporting the threats and risks facing civilians, including children<sup>(63)</sup>.

In the report submitted on children and armed conflicts in June 2020 before the Security Council, the UN Secretary General reported that 9 schools and 15 health facilities were targeted by shelling, in addition to the closing of 220 schools in Tripoli and its surroundings. He also documented the killing of 35 children and the maiming of 42 others. The responsibility for these abhorrent events is shared among the Libyan National Army and the pro-LNA units, the Tebu armed groups, the pro-GNA (Government of National Accord) forces, and the armed militias in Tripoli. In addition, during the clashes between the Libyan Army and the GNA forces, there were casualties among children, the majority of which were injured "because of the explosive remnants of war, and in the attack on Tripoli by the Libyan Army, which used artillery bombardment and air strikes with unmanned

<sup>62</sup> Libya: Tens of thousands of children at risk amidst violence and chaos of unrelenting conflict. UNICEF. January 17, 2020.

https://cutt.ly/ghGWdkk

<sup>63</sup> Joint statement on Libya by OCHA, UNHCR, UNICEF, UNFPA, WFP, WHO, IOM, 13 May 2020.

https://www.unicef.org/press-releases/joint-statement-libya

aerial vehicles". The report also referred to cases of denial of humanitarian access and noted that the Libyan National Army and the pro-LNA forces, the Tripoli-based armed militias, the Seventh Brigade and its affiliated groups, and finally the Tebu and Zawiya armed groups, all bear the responsibility of impeding humanitarian assistance.

## 2. Kidnap-for-Ransom and Mass Graves

In recent years, as a result of the security collapse, the rampant impunity and extrajudicial killings, and the proliferation as well as the violence of armed groups and gangs, kidnapping for ransom including the abduction of children has intensified. The UNSMIL and the OHCHR have documented some of these offenses in Tripoli, Benghazi, Sabha and Sabratah<sup>(64)</sup>. In addition to the child-kidnapping armed gangs, other reports indicated the abduction of children aged between 5 and 11 by the Islamic State<sup>(65)</sup>.

The child victims of kidnappings are sometimes executed by their captors. For example, a horrendous crime was perpetrated in in August 2017 against a child who was abducted then executed by an armed gang, because his family was not able to raise the ransom<sup>(66)</sup>. In 2008, public opinion was rocked by reports of a similar crime against three children aged between 5 and 12 who had been kidnapped in 2015, then assassinated by their abductors in the aftermath of failed ransom negotiations<sup>(67)</sup>. Their remains were found three years after their execution, in a forest south of Surman, a city 70 kilometers from the capital Tripoli<sup>(68)</sup>. Moreover, in his report on children and armed conflict in 2016, the UN Secretary General noted the rise in the abduction of children by armed groups, militias and criminal organizations, giving the example of a 16-year-old boy reportedly abducted

<sup>64</sup> Report on the Humanitarian Situation in Libya. The United Nations Support Mission in Libya (UNSMIL), the Office of the United Nations High Commissioner for Human Rights (OHCHR). November 16, 2015, p 25.

<sup>65</sup> Salam Gebrekidan. Special Report: Enslaved in Libya - One woman's extraordinary escape from Islamic State. Reuters. August 18, 2018.

<sup>66</sup> Abdelbasset Ghabara. Kidnapping: a Source of Funding for Armed Groups in Libya (in Arabic). Africagatenews.net. April 8, 2018.

<sup>67</sup> For more information on the incident: "The Assassination of Innocence in Libya: a Crime Reflecting a bitter security Landscape (in Arabic). Legal Agenda. April 11, 2014. https://www.legal-agenda.com/article.php?id=4356

<sup>68</sup> Shocking news in Libya after the authorities had found the remains of three children abducted three years ago. Agence France Presse, AFP. April 8, 2018 (in Arabic).

and killed by militias affiliated with Operation Karamah<sup>(69)</sup>. Other reports by Libyan organizations also indicated that the kidnapping of children has not ceased in 2020<sup>(70)</sup>.

The reality is that reporting the discovery of mass graves including remains of children, has almost become a customary practice in Libya. In June 2020 for example, 8 mass graves were discovered, mostly in Tarhouna<sup>(71)</sup>.

## 3. Local and Foreign Child Soldiers

In its concluding observations on Libya's second periodic report, the Committee on the Rights of the Child called on amending Article 1 of the Mobilization Law N° 21 of 1991, which provides for the conscription of citizens who have reached the age of 17. However, the said Law has not been amended yet, as recruiting and exploiting children in armed conflict in Libya has rather dramatically increased. The conscription of children is no longer limited to Libyan children, and various reports indicate that the two parties to the conflict are recruiting foreign mercenaries, including children.

It should be recalled that in 2016, numerous reports noted that children were recruited into the ranks of pro-GNA militias<sup>(72)</sup> and that in 2019, the US Department of State accused the GNA of not making "credible effortsto investigate or punish the recruitment or use of child soldiers." In June 2020, the Libyan government was also on the US annual blacklist of countries responsible for the recruitment and use of children as soldiers<sup>(74)</sup>.

<sup>69</sup> The United Nations. Children and Armed Conflict: Report of the Secretary-General. Document A/70/836-S/2016/360. April 20, 2016.

<sup>70</sup> Victims of Kidnapping and Assassination Crimes in Libya. Human Rights Solidarity. June 2020. https://hrsly.com/?p=5036 (in Arabic)

<sup>71</sup> UN chief expressed deep shock at the discovery of mass graves in Libya, and called for a thorough and transparent investigation, and for the perpetrators to be brought to justice. https://news.un.org/en/story/2020/06/1066272

<sup>72</sup> US Department of State 2016 Report on the Human Rights Practices: Libya.

<sup>73</sup> US Department of State 2019 Report on the Human Rights Practices: Libya

<sup>74</sup> Jo Becker, Record Number of Countries on US Child Soldier Blacklist, Human Rights Watch, 29 June 2020.

https://www.hrw.org/news/2020/06/29/record-number-countries-us-child-soldier-blacklist

In 2017, UNICEF indicated that the recruitment of hundreds of children since the beginning of the conflict has reportedly remained widespread in Libya<sup>(75)</sup>. Ahead of the peace summit in Berlin earlier this year, UNICEF urged "all parties to the conflict and those who have influence over them to protect children and end the recruitment and use of children."<sup>(76)</sup> The United Nations Working Group on the use of mercenaries noted that "thousands of Syrians, including children under the age of 18, were reportedly sent to Libya across Turkey"<sup>(77)</sup>. Other reports noted that Syrian children were recruited and transferred to Libya to fight alongside Haftar's forces.<sup>(78)</sup>

In 2016, the UN Secretary General noted that many armed militias, including groups affiliated with the Islamic State in Iraq and the Levant (ISIL) were recruiting, using and committing sexual violence against a largenumber of children<sup>(79)</sup>. However, in his most recent report on Children and Armed Conflict in 2020, he maintained that no incidents of the recruitment and use of children were verified, but the United Nations verified the arrest and ongoing detention of eight boys between the ages of 14 and 17 by the Government of National Accord for their association with the Libyan National Army (LNA)<sup>(80)</sup>. It should be recalled that the report's

<sup>75 125</sup> children associated with armed conflict released in Zintan, Libya, UNICEF, 22 October 2017. https://www.unicef.org/mena/press-releases/125-children-released-in-zintan-libya

<sup>76</sup> Ahead of the Berlin Conference, UNICEF warned against the vulnerable situation of children in Libya, and called on conflict parties to "urgently reach a comprehensive and durable peace agreement for the sake of each and every child in Libya." UN news. January 17, 2020. https://news. un.org/en/story/2020/01/1055492

<sup>77</sup> Libya: UN experts call for the investigation of violations related to the activities of mercenaries in the country. UN News. June 17, 2020. https://news.un.org/ar/story/2020/06/1056752 (in Arabic)

<sup>&</sup>quot;With the collusion of the "Syrian Government", a Russian Security Company Recruits Thousands of Syrians as Mercenaries to Fight in Libya Alongside Haftar's Forces" (in Arabic). Syrians for Truth and Justice Organization. July 28, 2020. The Organization itself published a report in May 2020 on Turkey's recruitment of mercenaries, including children, to fight in the ranks of the Government of National Accord. See: "Turkey's Recruitment of Syrian Mercenaries to Fight in Libya: the legal Measures and Implications." Syrians for Truth and Justice Organization. May 11, 2020.

<sup>79</sup> The United Nations. Children and Armed Conflict: Report of the Secretary-General. Document A/70/836-S/2016/360. April 20, 2016.

<sup>80</sup> The United Nations. Children and Armed Conflict. Report of the Secretary-General. Document A/74/845–S/2020/ 525. June 9, 2020.

introduction indicated that the information presented does not represent the full scale of violations against children, as verification depends on access. The conflict circumstances in Libya, aggravated by the impact of the coronavirus pandemic, hampers the ability of observers to freely travel and monitor human rights violations, in addition to the attacks and threats they endure during the performance of their duties.

## 4. Migrant Children Facing Horrors in Libya

Libya is dealing with irregular migration as a punishable 'crime'; and is committing gross violations of human rights against migrant children and others. In its 2010 report submitted to the Human Rights Council, the Working Group on Arbitrary Detention noted that detention of migrants in an irregular situation, or without proper documentation, is not in contravention of international human rights instruments. However, it considers that immigration detention should gradually be abolished, because migrants in an irregular situation have not committed any crime. The Working Group maintained that "the criminalization of irregular migration exceeds the legitimate interests of States in protecting its territories and regulating irregular migration flows." (81) In this respect, it should be recalled that a court in Tripoli convicted a number of migrants of an illegal attempt to exit the country following their interception at sea and refoulement (82). In Libya, the refoulement of migrants (including children) who are intercepted at the Mediterranean Sea, has recently become a commonplace practice.

During their attempts to flee persecution, vulnerable economic situations, miserable living conditions, insecurity and the eruption of civil wars in their countries of origin, migrant and refugee children are vulnerable in Libya to various types of abuses and gross violations, such as kidnapping for a ransom or sale in slave markets. Numerous UN reports indicated that they were frequently 'sold' from one criminal gang to another and required to pay

<sup>81</sup> Report of the Working Group on Arbitrary Detention. Human Rights Council. Thirteenth Session. January 18, 2010. Document A/HRC/13/30.

<sup>82</sup> Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya. United Nations Human Rights Office of the High Commissioner and United Nations Support Mission in Libya. December 18, 2018.

ransoms multiple times before being set free. <sup>(83)</sup> In 2017, the International Organization for Migration (IOM) announced the discovery of slave markets in Libya. A chief IOM spokesman in Geneva declared that "migrants who go to Libya while trying to get to Europe, have no idea of the torture archipelago that awaits them just over the border [...] There they become commodities to be bought, sold and discarded when they have no more value." Abuses against Sub-Saharan migrants and refugees are compounded by "the failure of the Libyan authorities to address racism, racial discrimination and xenophobia." <sup>(85)</sup>

Furthermore, Libya endures the proliferation of armed factions and militias that control a large number of illegal detention centers they run themselves. They make "their own rules, control border crossings and detain and exploit migrants, taking all the money they have." (86) According to Médecins Sans Frontières, the militias treated the migrants inside detention centers "with cruelty" and sold them to human traffickers. Several Italian media outlets noted that "Rome directly pays the militias to arrest these migrants." (87)

Bilateral agreements signed between Italy and Libya from 2007 to 2009 "included provisions to address irregular migration, which led to migrants being intercepted in international waters and returned to Libya." Following their refoulement to Libya, migrant children and others have been subjected to "arbitrary detention, torture – including rape and sexual violence – and

<sup>83</sup> Ibid.

<sup>84</sup> IOM Learns of 'Slave Market' Conditions Endangering Migrants in North Africa, International Organization for Migration, 11 April 2017.

https://www.iom.int/news/iom-learns-slave-market-conditions-endangering-migrants-north-africa

<sup>85</sup> Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya. United Nations Human Rights Office of the High Commissioner and United Nations Support Mission in Libya. December 18, 2018.

<sup>86</sup> Francesca Mannocchi. Trapped: Inside Libya's Detention Centers. UNICEF. February 24, 2017.

<sup>87</sup> Shocking and Inhuman Situation in Immigrant Camps in Libya (in Arabic). DW. September 8, 2017. https://p.dw.com/p/2jZgy

<sup>88 &</sup>quot;Detained and Dehumanized", Report on Human Rights Abuses Against Migrants in Libya. United Nations Human Rights Office of the High Commissioner and United Nations Support Mission in Libya. December 13, 2016

other ill-treatment, unlawful killings, and forced labor." (89) In June 2020, the UN Secretary General referred to reports of rape and other forms of sexual violence perpetrated against refugee and migrant girls, including incidents of forced prostitution by criminal networks, some of which are associated with armed groups. (90) Children were also incarcerated in detention centers along with adults. Oftentimes, the migrant child had no official papers, and their age was established by the detention center officers who "often fail to make sound estimates about the age of these tall children of large stature, and consequently detain them with adults." (91)

According to the IOM migrant report from March to April 2020, at least 625,638 migrants were identified in Libya, 7% of whom were children. Furthermore, almost one quarter of migrant children were reported to be unaccompanied. By the end of April 2020, 178 children were forcibly returned to Libya by the Libyan Coast Guard. A new report jointly released on 29 July 2020 by UNHCR and the Mixed Migration Centre (MMC) at the Danish Refugee Council noted that; Libya is not a safe place to return people to. In some cases, migrant children face charges in some northern Mediterranean countries after fleeing the hellish conditions in Libya and refusing to be returned.

The migrant children who survived kidnapping and sale in slave markets, those who did not drown in their journey in irregular immigration boats, or those forcibly returned while being kilometers away from European shores, were captured and detained. The UNHCR was unable to helprelease

<sup>89</sup> Ibid.

<sup>90~</sup> The United Nations. Children and Armed Conflict. Report of the Secretary-General. Document A/74/845–S/2020/ 525. June 9, 2020

<sup>91</sup> Interview with a UNICEF staff member who preferred to remain anonymous.

<sup>92</sup> Libya's Migrant Report, International Organization for Migration, (March - April 2020). https://cutt.ly/BhHJojJ

<sup>93</sup> Thousands of refugees and migrants suffer extreme rights abuses on journeys to Africa's Mediterranean coast, new UNHCR/MMC report shows. July  $29,\,2020$ .

https://cutt.ly/ChGWJMC

<sup>94</sup> Judith Sunderland and Marlene Auer. Migrants Face Trial after Resisting Return to Libya as Children. Human Rights Watch. August 12, 2020. https://cutt.ly/VhGWB3a

them, except for the purpose of evacuating them to a third country. About a year ago, the UNHCR welcomed the announcement from Libya to close three detention centers for migrants and refugees. It also noted that pockets of progress have been achieved in recent years, with some of the criminals responsible for the abuses and deaths placed under sanctions or arrested, in addition to the reduction in the number of people being held in official detention centers in Libya.

Migrant children were detained in horrendous conditions, either following interceptions at sea and refoulement, after being arrested during raids in neighborhoods with large migrant populations or taken from checkpoints or the streets. They were also denied access to lawyers to challenge the legality of their detention before judicial authorities. While some children were lucky enough to be evacuated to safe third countries, a large number of them were returned to their countries of origin through the Voluntary Humanitarian Returns program. (98)

<sup>95</sup> Desperate Journeys: refugees and migrants arriving in Europe and at Europe's borders. January—December 2018. https://www.unhcr.org/desperatejourneys/

<sup>96</sup> UNHCR welcomes the announcement of Libya to close three detention centers for migrants and refugees (in Arabic). UN News. August 2, 2019.

https://news.un.org/ar/story/2019/08/1037751 (in Arabic).

<sup>97</sup> Thousands of refugees and migrants suffer extreme rights abuses on journeys to Africa's Mediterranean coast, new UNHCR/MMC report shows. July 29, 2020.

https://cutt.ly/phGW8z7

<sup>98</sup> Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya. United Nations Human Rights Office of the High Commissioner and United Nations Support Mission in Libya. December 18, 2018.

# Conclusion

Notwithstanding that Libya is party to the Convention on the Rights of the Child and other conventions and charters providing for the respect, protection and fulfillment of children's rights, the Libyan legislative system is still plagued by serious gaps. The legal loopholes are essentially related to the provision of the necessary safeguarding procedures to protect the rights of the child, and to the compliance to international obligations in this regard, despite the promulgation of a law that is supposed to respond to the implementation requirements of the Convention on the Rights of the Child. Following the revolution, the political will was also absent in terms of addressing the legislative deficiencies, reviewing the laws regulating justice for juvenile offenders, and eliminating discrimination against the children of some Libyan women, the children of unknown parents and children belonging to minority groups. The ruling elites, however, still insist on pursuing the authorities' approach in the pre-revolution era, in terms of their perception of refugees and the returnees' children in the South as a threat to the country and to national security. This obsolete perception severely affects the rights of refugee and asylum-seeking children, as well as succeeding generations among the children of returnees.

Libya should waste no time in adhering to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. In the meantime, Libyan authorities should cease dealing with migrants, refugees and asylum seekers (children in particular) as offenders, ensure an immediate halt to violations against them in detention facilities owned by the State or armed groups, and put an end to refoulement operations from the Mediterranean Sea.

Because the Higher Committee for Childhood Protection established in 2018 has not, as it were, sufficiently carried out a community debate about its activities, it is called upon to make further efforts in this regard. It should also work with the Libyan and international human rights organizations defending children's rights, to tap into their vision and expertise, with a view to preparing a comprehensive bill concerned with the rights of the child. The basic frame of reference in drafting this law should be the Convention on the Rights of the Child and the CRC interpretations of the Convention's

articles. In this respect, Libyan authorities should resume submitting periodic reports to the Committee and should not lessen their efforts in fulfilling this obligation.

Furthermore, the Libyan authorities, both in the East and West, should take action to ensure that political divisions will not further undermine children's rights. They should also put an end to the growing number of civilian casualties and child deaths due to the persistence of the armed conflict. Additionally, the regional and international organizations concerned with human rights in Libya should give greater attention to the child in their research efforts and should monitor and document violations of the rights of the child in legislation and practice, as well as joining international advocacy efforts to protect children's rights in Libya. The United Nations should, on its part, provide further support to the efforts of the task force on monitoring and reporting to have access to Libya, investigate the incidents of human rights violations against children and identify the parties and the persons responsible, issue flash reports on these infringements, and impose sanctions on perpetrators.

We should also point out that documenting abuses against children's rights, by impartial international human rights organizations, is of paramount importance. Documentation serves the double purpose of compensating for the tremendous lack of data and cross-checking the relevant information, in addition to addressing the repercussions of the acute polarization affecting the professional work of Libyan and regional media which serve the interests of the party they support and ignore its violation of human rights. It would also be beneficial for international organizations to transfer their expertise to Libyan human rights organizations defending the rights of the child, and develop their capacity to document, monitor and analyze children's rights violations, according to international standards.

Finally, the international community, in general, and the various regional and international actors supporting the parties to the Libyan conflict, in particular, must strictly adhere to and implement the Security Council resolutions concerning the arms embargo on Libya. Furthermore, all the Libyan and international stakeholders should support the Independent Fact-Finding Mission on Libya, established by the United Nations Human Rights

Council through resolution 43/39 of 22 June 2020, and back its endeavors to investigate the violations of international human rights and humanitarian laws throughout Libya by all parties since the beginning of 2016.