

LIBYA¹

OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES (Updated as at 31 May 2017)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
Equality of spouses in marriage <i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and family relations codified or uncodified? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncodified, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly state gender-stereotypical roles between husbands and wives e.g.</i>	<p>Article 6 of the Constitution states that Libyans shall be equal before the law, enjoy equal civil and political rights, have the same opportunities in all areas and be subject to the same public duties and obligations, without distinction on various basis, including gender or familial adherence.²</p> <p>Article 5 of the Constitution declares the family as the basis of society and obligates the State to protect it and encourage marriage. The State is also obligated to guarantee the protection of motherhood, childhood and old age and look after children, young people and persons with special needs³</p> <p>Law No. 10/1984 on Marriage and Divorce (Marriage and Divorce Law or MDL) is the main codified</p>		<p>Libya has reservations to Articles 2 and 16(d) of CEDAW and states:</p> <ul style="list-style-type: none"> Article 2 of the Convention will be implemented with due regard for the peremptory norms of <i>Shari'ah</i> principles relating to inheritance; The implementation of Articles 16(c) and (d) will be without prejudice to any of the rights guaranteed to women by the Islamic <i>Shari'ah</i>.⁸ 	<p>According to the 2016 UNDP Human Development Report, Libya ranked 102 on the UNDP Human Development Index and 38 on the UNDP Gender Inequality Index.¹⁰</p> <p>According to media reports, women's rights have been severely impacted following the overthrow of Muamar Gaddafi. The regressive amendments made to the MDL by Law No. 14/2015 reflect this move towards pulling back the</p>	

¹ This Musawah project to map Muslim Family Laws globally was led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For this Libya country table, we would also like to thank Alyssa Oravec from Harvard Law School, and Zahra Langhi for their inputs in its preparation.

² Article 6 of Libya's Constitution (2011), https://www.constituteproject.org/constitution/Libya_2011.pdf

³ Article 5 of Libya's Constitution (2011), https://www.constituteproject.org/constitution/Libya_2011.pdf

<p><i>the husband is the head of the household or the wife is the primary caregiver?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 54-55 GR29</p>	<p>law that governs matters relating to marriage and family relations of the predominantly Muslim population in Libya.⁴ In the absence of codified laws that sufficiently address a particular matter of personal status of Muslims, according to Article 72 of the MDL, the rules of the Islamic religion that are most suitable apply.⁵ Generally, Islam in Libya is influence by the rules of Maliki jurisprudence (<i>fiqh</i>).⁶</p> <p>The MDL provides for a marital framework based on “reciprocal” or “complementary” rights (as opposed to “equal” rights) between the two spouses that in turn is based on the concept of male guardianship over women and children. Thus:⁷</p>		<p>The Government of Libya in its 2009 report to the CEDAW Committee said that the MDL does not provide for equality in respect to the rights and responsibilities during marriage and at its dissolution. Instead, Articles 17 and 18 of the MDL tasks the husband and wife with different rights and responsibility towards each other.⁹</p>		<p>hard-won advancement of women’s rights in Libya that was made in the past.¹¹</p>
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⁸ United Nations Treaty Collection Website, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en

¹⁰ UNDP, “Human Development Report 2016”, Table 5, pp. 214-217, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf

⁴ Marriage and Divorce Law (1984), <http://aladel.gov.ly/home/?p=1246> as amended by Law No. 14/2015, <http://aladel.gov.ly/home/wp-content/uploads/2015/12/قانون رقم 14 لسنة 2015م بتعديل بعض أحكام القانون رقم 10 لسنة 1984م بشأن الأحكام الخاصة بالزواج والطلاق وأثارها 14.pdf>

⁵ Article 72 of the Marriage and Divorce Law (1984), <http://aladel.gov.ly/home/?p=1246>; Lynn Welchman, “Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy”, (Amsterdam: Amsterdam University Press, 2007), p. 45, <https://goo.gl/AeQSDU>

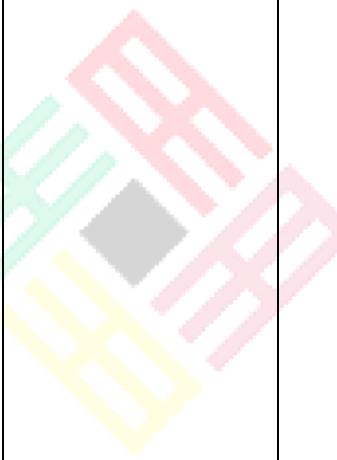
⁶ Alison Pargeter, “Libya”, in *Women’s Rights in the Middle East and North Africa: Progress Amid Resistance*, eds. Sanja Kelly and Julia Breslin (New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010), pp. 8, 10, https://freedomhouse.org/sites/default/files/inline_images/Libya.pdf

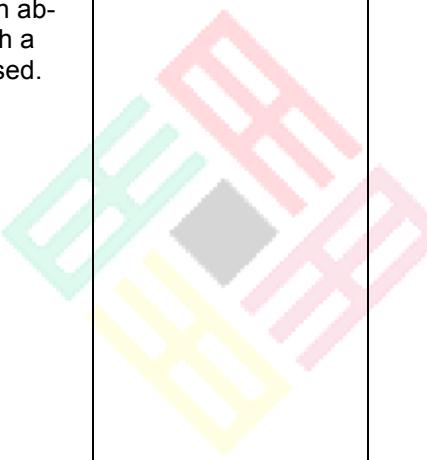
⁷ Articles 2, 17-18 of the Marriage and Divorce Law (1984), <http://aladel.gov.ly/home/?p=1246> as amended by Law No. 14/2015, <http://aladel.gov.ly/home/wp-content/uploads/2015/12/قانون رقم 14 لسنة 2015م بتعديل بعض أحكام القانون رقم 10 لسنة 1984م بشأن الأحكام الخاصة بالزواج والطلاق وأثارها 14.pdf>; Lynn Welchman, “Women and Muslim

Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy”, (Amsterdam: Amsterdam University Press, 2007), pp. 173-174, <https://goo.gl/AeQSDU>. Before 2015, Article 18(a) required a wife to provide her husband with financial maintenance if he is destitute and the wife is wealthy.

⁹ Libya State party report, U.N. Doc. CEDAW/C/LBY/5 (2009), pp. 36-37, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

¹¹ Jazya Gebril, “Women’s Rights in Libya: Preserving Past Gains, Fearing for the Future”, *The Legal Agenda*, 19 December 2015, <http://legal-agenda.com/en/article.php?id=3113>; Hanan Dakhil, “5 years after the revolution that toppled Muammar Qaddafi, Libya’s missing link is its women”, *New York Times*, 22 December 2016, <http://nytlive.nytimes.com/womenintheworld/2016/12/22/5-years-after-the-revolution-that-toppled-muammar-qaddafi-libyas-missing-link-is-its-women/>

	<ul style="list-style-type: none">Article 2 defines marriage as a contract between a man and a woman who is legally available to him based on the foundations of affection, compassion and harmony;Article 17 provides that the wife is entitled to the following from her husband: (i) financial maintenance; (ii) non-interference with her personal properties; and (iii) not causing her physical or mental injury;Article 18 tasks the wife with: (i) concern for the husband's comfort and his emotional and mental stability; (ii) supervision of the marital house and organisation and maintenance of its affairs; (iii) raising, protecting and nursing her children, provided she is not prevented from doing so because of a medical impediment; (iv) refraining from harming the husband physically and psychologically.				
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<p>Minimum and equal legal age for marriage</p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there equality in the minimum age of marriage? Does the minimum age of marriage match the age of majority? Is there a minimum age verification process before the marriage is concluded?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(2) Paras. 36-39 GR21</p>	<p>The minimum legal age for marriage is 18 for females and males as per Article 6(a) of the MDL.¹² However Article 6(b) provides that a judge may permit girls and boys below 18 to marry if it is beneficial to the parties or there is a necessity and after the agreement of the guardian.¹³</p> <p>The law does not specific an absolute minimum below which a marriage cannot be authorised.</p>				<p>According to Girls Not Bride, child marriages are relatively rare in Libya. In 2006/07 only 2% of women aged 20-24 were married by 18.¹⁴ However:</p> <ul style="list-style-type: none"> • According to a media report, following the overthrow of Muamar Gaddafi and the deterioration of the security condition across the country, the problem of child brides is now emerging, with ISIS fighters reportedly forcefully marrying girls as young as 12;¹⁵
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¹² قانون رقم 14 لسنة 2015م بتعديل Article 6(a) of the Marriage and Divorce Law (1984) as amended by Law No. 14/2015, http://aladel.gov.ly/home/wp-content/uploads/2015/12/بعض_أحكام_القانون_رقم_10_لسنة_1984_م_بشان_الأحكام_الخاصة_بالزواج_والطلاق_وأثارها.pdf; Before 2015, the original Article 6(a) had 20 as the minimum marriage age

¹³ قانون رقم 14 لسنة 2015م بتعديل Article 6(b) of the Marriage and Divorce Law (1984) as amended by Law No. 14/2015, http://aladel.gov.ly/home/wp-content/uploads/2015/12/بعض_أحكام_القانون_رقم_10_لسنة_1984_م_بشان_الأحكام_الخاصة_بالزواج_والطلاق_وأثارها.pdf

¹⁴ Farzaneh Roudi-Fahmi and Shima Ibrahim, "Ending Child Marriage in the Arab Region", (Girls Not Bride Policy Brief, 2013), Figure 1, p.1, <http://www.prb.org/pdf13/child-marriage-arab-region.pdf>

¹⁵ Heather Saul, "ISIS in Libya: Families forced to marry girls as young as 12 to fighters for protection as clinics see growing number of miscarriages and STDs", *Independent*, 12 May 2015, <http://www.independent.co.uk/news/world/europe/isis-in-libya-families-forced-to-marry-girls-as-young-as-12-to-fighters-for-protection-as-clinics-10244257.html>

					<ul style="list-style-type: none"> According to academic research, the minimum legal age for marriage of 18 is frequently violated in the rural areas.¹⁶
<p>Women's consent to marriage</p> <p><i>Is a marriage valid without the woman's consent? Is the practice of forcing women to marry against their will (ijbar) prohibited? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the basis that it advances women's rights or otherwise? Is it mandatory to register a marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(b) Paras. 15-16 GR21 Paras. 25-26, 33-34 GR29</p>	<p>Regardless of their age, both prospective brides and grooms must consent to the marriage. Consequently, <i>ijbar</i> marriages are prohibited.</p> <p>Article 8(a) prohibits a guardian from forcing a young man or woman into marriage against their will.¹⁷</p> <p>Article 9 of the MDL requires the consensus views of both the prospective bride and the guardian for the marriage to be valid.¹⁸</p> <p>The mandatory registration of a marriage is provided for in Article</p>			<p>A marriage contract must be registered with civil registry secretary of the jurisdiction in which the marriage took place within seven days of its conclusion.²⁰</p>	<p>According to information gathered by the UK Home Office, the ground, women who are raped can be forced into marriage to ward off shame and to save the family honour. This is practice is carried out based on Article 424 of the Penal Code which exempts a rapist from criminal liability if he marries the victim.²¹</p>

¹⁶ Intisar S. Azzuz, "Libyan Women: Past, Present and Future", in *A New Paradigm: Perspectives on the Changing Mediterranean*, eds. Sasha Toperich and Andy Mullins, (Washing DC: Center for Transatlantic Relations SAIS, 2014), p. 154, https://transatlanticrelations.org/wp-content/uploads/2016/08/Paradigm_whole.pdf

¹⁷ Article 8(a) of the Marriage and Divorce Law (1984), <http://aladel.gov.ly/home/?p=1246>; Lynn Welchman, "Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy", (Amsterdam: Amsterdam University Press, 2007), p. 163, <https://goo.gl/AeQSDU>

¹⁸ Article 9 of the Marriage and Divorce Law (1984), <http://aladel.gov.ly/home/?p=1246>; Lynn Welchman, "Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy", (Amsterdam: Amsterdam University Press, 2007), p. 163, <https://goo.gl/AeQSDU>

	29 of the Civil Status Law No. 36/1968. ¹⁹				
Women's capacity to enter into marriage <i>Is consent of a marital guardian (wali) required? If so, can a woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marital rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i> <u>Applicable CEDAW Provision</u> Articles 16(1)(a), 16(1)(b) Paras. 15-16 GR21	<p>Regardless of her age, a prospective bride requires the consent of a marital guardian (<i>wali</i>) to enter into marriage. The guardian must be a male relative (father, etc.).²²</p> <p>A judge can act as guardian in the absence of male relatives. In addition, if the guardian opposes the marriage, the prospective bride may seek the authority of the court to get married. The court may authorise the marriage if it considers the marriage appropriate.²³</p> <p>Article 8(b) prohibits a <i>wali</i> from unreasonably withholding his consent to the marriage of a prospective bride.²⁴</p>				

²⁰ Article 29 of the Civil Status Law (1968), [http://security-legislation.ly/sites/default/files/files/lois/26-Law%20No.\(36\)%20of%201968_EN.pdf](http://security-legislation.ly/sites/default/files/files/lois/26-Law%20No.(36)%20of%201968_EN.pdf); Netherlands Office of the Commissioner General for Refugees and Stateless Persons et al., "Libya: Nationality, Registration and Documents", 2014, p. 19, <http://www.refworld.org/docid/54afda3d4.html>

²¹ Article 424 of the Penal Code (1953), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/97659/115997/F-671669284/LBY97659%20Ara.pdf>; UK Home Office, "Libya: Violence Against Women", *Country Information and Guidance*, p. 10, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/362008/CIG_-Libya_-_Women_-_October_8_2014.pdf

¹⁹ Article 29 of the Civil Status Law (1968), [http://security-legislation.ly/sites/default/files/files/lois/26-Law%20No.\(36\)%20of%201968_EN.pdf](http://security-legislation.ly/sites/default/files/files/lois/26-Law%20No.(36)%20of%201968_EN.pdf)

²² Articles 7-9 of the Marriage and Divorce Law (1984),), <http://aladel.gov.ly/home/?p=1246>; Lynn Welchman, "Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy", (Amsterdam: Amsterdam University Press, 2007), p. 163, <https://goo.gl/AeQSDU>

²³ Articles 7-9 of the Marriage and Divorce Law (1984),), <http://aladel.gov.ly/home/?p=1246>; Lynn Welchman, "Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy", (Amsterdam: Amsterdam University Press, 2007), p. 163, <https://goo.gl/AeQSDU>

²⁴ Article 8(b) of the Marriage and Divorce Law (1984), <http://aladel.gov.ly/home/?p=1246>; Lynn Welchman, "Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy", (Amsterdam: Amsterdam University Press, 2007), p. 163, <https://goo.gl/AeQSDU>

Para. 34 GR29	Pursuant to Article 3 of the MDL, both spouses may stipulate any condition in their marriage contract so long as: (i) they are explicitly stated; and (ii) the conditions do not contradict the essential purposes of marriage. ²⁵			
Polygamous marriages <i>Does the law prohibit polygamy or impose strict conditions on such practice? Is the permission of the court required for a polygamous marriage? Is the permission of an existing wife required for a polygamous marriage? Is it necessary to inform an existing wife of the polygamous marriage? Are temporary marriages such as traveler's marriages (misyar) recognised? Is it necessary to register a polygamous marriage? Can a woman stipulate in the marriage contract that her intended husband cannot enter into a polygamous marriage?</i>	A Muslim man may marry up to four wives at one time without much restrictions. ²⁶	In 2013, the Constitutional Chamber of the Supreme Court held that the requirement for a husband to seek the permission of existing wives to enter a subsequent marriage was unconstitutional as it contravenes <i>Shari'ah</i> . Before the court's decision, in order to take marry more than one wife, a husband must secure judicial permission and also obtain the written		According to Human Rights Watch, in the past, polygamous marriages do occur in Libya but relatively uncommon. However, feminist groups are concerned that polygamous marriages may increase as a result of political rhetoric that encourages polygamous marriages on the basis that such marriages are allowed by <i>Shari'ah</i> . ²⁸

²⁵ Article 3 of the Marriage and Divorce Law (1984), <http://aladel.gov.ly/home/?p=1246>; Lynn Welchman, "Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy", (Amsterdam: Amsterdam University Press, 2007), p. 181, <https://goo.gl/AeQSDU>

²⁶ Before 2015, Article 13 of the Marriage and Divorce Law (1984) provided that a man may take another wife with the permission of a competent court after his social circumstance as well as financial and physical abilities have been ascertained. Law No. 14/2015 repealed Article 13 of the MDL, <http://aladel.gov.ly/home/wp-content/uploads/2015/12/قانون رقم 14 لسنة 2015م بتعديل بعض أحكام القانون رقم 10 لسنة 1984م بشأن الأحكام الخاصة بالزواج والطلاق وأثارها.pdf>; Jazyra Gebril, "Women's Rights in Libya: Preserving Past Gains, Fearing for the Future", *The Legal Agenda*, 19 December 2015, <http://legal-agenda.com/en/article.php?id=3113>; Hanan Dakhil, "5 years after the revolution that toppled Muammar Qaddafi, Libya's missing link is its women", *New York Times*, 22 December 2016, <http://nytlive.nytimes.com/womenintheworld/2016/12/22/5-years-after-the-revolution-that-toppled-muammar-qaddafi-libyas-missing-link-is-its-women/>

Applicable CEDAW Provision Para. 14 GR21 Para. 34 GR29		agreement of existing wives. ²⁷			
Divorce rights <i>Is there equal right to divorce between women and men? Can the husband divorce without reason and without having to go to court? What are the main forms of divorce? Can all forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce by repudiation (<i>talāq</i>) prohibited? If unilateral divorce is not prohibited, what is the procedure i.e. is the presence of the spouse to be divorced required, are witnesses required, does the spouse seeking divorce need to go to court, is the divorced spouse informed of the</i>	The MDL provides for three different mechanisms for divorce: (i) unilateral repudiation (<i>talāq</i>); (ii) judicial divorce; and (iii) redemptive divorce (<i>khul'</i>). ²⁹ A husband may unilaterally repudiate a marriage without much restrictions. ³⁰ Valid grounds for seeking judicial divorce by a wife include a husband's: (i) failure to provide financial maintenance; (ii) defect that prevent consummation of marriage' (iii) prolonged absence without an acceptable reason; (iv) abandonment of the marital bed for over four months. In addition, a wife may seek divorce on the				

²⁸ Human Rights Watch, "A Revolution for All: Women's Rights in the New Libya", 2013, p. 30.

https://www.hrw.org/sites/default/files/reports/libya0513_brochure_LowRes_0.pdf

²⁷ Suliman Ibrahim, "Libya's Supreme Court and the Position of Sharia, in the Perspective of Constitutional and Legal History", in *Searching for Justice in Post-Gaddafi Libya*, eds. Jan Michiel Otto, Jessca Carlisle and Suliman Ibrahim, (Leiden/Benghazi: Leiden University, 2013), pp. 54-55, <http://media.leidenuniv.nl/legacy/otto-jm,-j-carlisle-and-s-ibrahim-2013-searching-for-justice-in-post-gaddafi-libya.pdf>; Al Arabiya, "Libyan men now allowed to marry without consent of first wife: court rule", *Al Arabiya*, 7 February 2013, <http://english.alarabiya.net/articles/2013/02/07/264927.html>

²⁹ Jessica Carlisle, "Her Day in Court: The Work of a Judge on Family Law Cases in Tripoli", in *Searching for Justice in Post-Gaddafi Libya*, eds. Jan Michiel Otto, Jessca Carlisle and Suliman Ibrahim, (Leiden/Benghazi: Leiden University, 2013), p. 110, <http://media.leidenuniv.nl/legacy/otto-jm,-j-carlisle-and-s-ibrahim-2013-searching-for-justice-in-post-gaddafi-libya.pdf>

³⁰ قانون رقم 14 لسنة 2015م بتعديل / بعض أحكام القانون رقم 10 لسنة 1984م بشأن الأحكام الخاصة بالزواج والطلاق وأثارهما

<p>divorce? Is the unilateral right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to register a divorce?</p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 34, 39-40 GR29</p>	<p>basis of harm caused by the husband.³¹</p> <p>A wife may seek redemptive divorce (<i>khul'</i>), whereby she is granted a divorce in exchange for a mutually-agreed compensation to be paid to the husband. Generally, a <i>khul'</i> divorce requires the consent of both parties. However, a judge may rule for <i>khul'</i> over the objection of the husband and specify an appropriate compensation to be paid by the wife, if the judge determines that the husband's refusal is unreasonable.³²</p> <p>The mandatory registration of a divorce is provided for in Article 29 of the Civil Status Law No. 36/1968. Article 30 states that divorce court rulings must be registered within 10 days of their issuance³³</p>				
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³¹ Articles 39-43 of the Marriage and Divorce (1984), <http://aladel.gov.ly/home/?p=1246>; Libya State party report, U.N. Doc. CEDAW/C/LBY /5 (2009), pp. 36-37, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

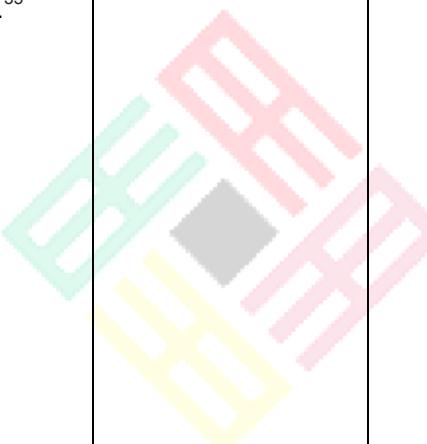
³² قانون رقم 14 لسنة 2015م³⁴، تعديل بعض أحكام القانون رقم 10 لسنة 1984م بشأن الأحكام الخاصة بالزواج والطلاق وأثارها

³³ Articles 29-30 of the Civil Status Law (1968), <http://security-legislation.ly/ar/node/31796>

<p>Women's financial rights after divorce</p> <p><i>Is there a legal concept of matrimonial assets? Is there equal division of marital property upon dissolution of the marriage? Is the woman's role as wife and mother recognised as contribution to the acquisition of assets? What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a consolatory gift or compensation upon divorce (mut'ah)? Who is responsible for the financial maintenance of children following a divorce? Can the couple agree to the division of assets acquired during marriage in the marriage contract? Can this stipulation be amended? If so, by who and on what basis e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(c), 16(1)(h) Paras. 30-33 GR21 Paras. 34-35, 43-48 GR29</p>	<p>Generally, upon divorce, a woman may be entitled to:³⁴</p> <ul style="list-style-type: none"> Financial maintenance during the waiting period after the divorce (<i>iddah</i>). The <i>iddah</i> period is generally three months. The quantum of <i>iddah</i> maintenance is determined by the court; A consolatory gift or compensation (<i>mut'ah</i>), if the divorce was initiated by the husband. The quantum of <i>mu'tah</i> payment is determined by the court, taking into account former husband's financial means. <p>There is no legal concept of matrimonial assets.</p> <p>Following a divorce, the father is responsible for the financial maintenance of his children if the children do not have funds of their own. If the mother is the custodian, the father is obligated to house both the mother and his</p>				<p>According to reports by UNICEF and Human Rights Watch as well as academic research:³⁶</p> <ul style="list-style-type: none"> The husband's duty to support the woman financially during the <i>iddah</i> period is rarely enforced; Upon divorce, men typically keep the marital home and other property, and women are often left only with their personal items and whatever assets that were agreed upon in the marriage contract; Post-divorce child maintenance and
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³⁴ Articles 51-52 Marriage and Divorce Law (1984), <http://aladel.gov.ly/home/?p=1246>

³⁶ UNICEF, "Libya", *MENA Gender Equality Profile*, 2011, p. 2, <https://www.unicef.org/gender/files/Libya-Gender-Eqaulity-Profile-2011.pdf>; Human Rights Watch, "A Revolution for All: Women's Rights in the New Libya", 2013, p. 30. https://www.hrw.org/sites/default/files/reports/libya0513_brochure_LOWRES_0.pdf; Jessica Carlisle, "Her Day in Court: The Work of a Judge on Family Law Cases in Tripoli", in *Searching for Justice in Post-Gaddafi Libya*, eds. Jan Michiel Otto, Jessca Carlisle and Suliman Ibrahim, (Leiden/Benghazi: Leiden University, 2013), p. 112, <http://media.leidenuniv.nl/legacy/otto-jm,-j-carlisle-and-s-ibrahim-2013-searching-for-justice-in-post-gaddafi-libya.pdf>

	<p>children and pay the mother maintenance to cover the expenses of his children. A daughter is entitled to maintenance until she is married or is able to earn sufficient income for her expenses; a son is entitled to maintenance until he is able to earn a living of his own or if he is a student until the successful completion of his education.³⁵</p>				<p>housing are the biggest problems in the <i>Shari'ah</i> courts. The average amount awarded by the courts is around 100-150 Libyan dinars per month. However, even this amount is difficult to enforce. Child maintenance can be directly deducted from the wages of fathers they are state employees but father who do not work for the government may try to avoid paying at all. In addition, although fathers are legally obligated to house the custodian mother and children after a divorce, in practice, some fathers and their</p>
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³⁵ Article 51, 69-71 of the Marriage and Divorce Law (1984), <http://aladel.gov.ly/home/?p=1246>; Jessica Carlisle, "Her Day in Court: The Work of a Judge on Family Law Cases in Tripoli", in *Searching for Justice in Post-Gaddafi Libya*, eds. Jan Michiel Otto, Jessca Carlisle and Suliman Ibrahim, (Leiden/Benghazi: Leiden University, 2013), p. 112, <http://media.leidenuniv.nl/legacy/otto-jm,-j-carlisle-and-s-ibrahim-2013-searching-for-justice-in-post-g-addafi-libya.pdf>

					lawyers intimidate and bully their former -wives into giving up this right by making their lives intolerable.
<p>Custody of Children</p> <p><i>Do parents have equal rights over the custody of their children? If no, who has priority right over the custody of the child? Is custody decided based on the best interest of the child? Do mothers automatically lose custody upon remarriage or if she is deemed disobedient or when the child reaches a designated age when custody goes to father?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>During marriage both parents have custodial rights over their children. In the event of a divorce, a mother has priority right over the custody of her children (followed by the children's maternal grandmother, father, etc. as stipulated in the law) until her daughter gets marries and her son reaches puberty.³⁷</p> <p>A court may decide otherwise based on interests of the child, so long as it does not infringe on the custody rights of the mother, father, or grandparents.³⁸</p> <p>A mother loses custody of her child if she is: (i) is deemed to be unsound; (ii) is not in good health; (iii) is unable to adequately care for the child; or (iv) remarries and her new husband is not closely related to the child (<i>mahram</i>).³⁹</p>				While the law favours the mother in custody disputes, traditional norms favour the father. Judges sometimes use their discretion to grant fathers custody over the children on this basis sometimes will grant it based off of this, especially if the mother is not Libyan. ⁴⁰

³⁷ Article 62 of the Marriage and Divorce Law (1984), <http://aladel.gov.ly/home/?p=1246>

³⁸ Article 62 of the Marriage and Divorce Law (1984), <http://aladel.gov.ly/home/?p=1246>

³⁹ Article 65-66 of the Marriage and Divorce Law (1984), <http://aladel.gov.ly/home/?p=1246>

<p>Guardianship of Children</p> <p><i>Do parents have equal rights over the guardianship of their children? If no, who has priority right over the guardianship of the child? Is guardianship decided based on the best interest of the child?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>A father is considered to have natural guardianship rights over the children, providing him with the authority to make decisions in matters such as the children's education or finances.⁴¹</p>				
<p>Family Planning</p> <p><i>Do women require the consent of the husband to practise family planning, including abortions and sterilisation in law or in practice?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(e), 12 Paras. 21-23 GR21</p>	<p>A woman is required to seek the permission of her husband to obtain contraceptives because they are only issued to a couple where there is mutual consent.⁴²</p> <p>Abortion is strictly prohibited by law, except when it is necessary to save the pregnant woman's life.⁴³</p>		<p>The Government of Libya stated in its 1999 report to the CEDAW Committee that the decision of number and spacing of children should be made by mutual agreement of the spouses.⁴⁴</p>	<p>According to World Bank data, the total fertility rate decreased from 7.2 children per woman in 1960 to 2.4 in 2015.⁴⁵</p>	<p>According to the UN Population Division's 2015 Trends in</p>

⁴⁰ Alison Pargeter, "Libya", in *Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, eds. Sanja Kelly and Julia Breslin (New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010), p. 13, https://freedomhouse.org/sites/default/files/inline_images/Libya.pdf

⁴¹ Article 32 of Law No. 17/1992 on the Regulation of the Situation of Minors; Jessica Carlisle, "Her Day in Court: The Work of a Judge on Family Law Cases in Tripoli", in *Searching for Justice in Post-Gaddafi Libya*, eds. Jan Michiel Otto, Jessca Carlisle and Suliman Ibrahim, (Leiden/Benghazi: Leiden University, 2013), p. 11', <http://media.leidenuniv.nl/legacy/otto-jm,-j-carlisle-and-s-ibrahim-2013-searching-for-justice-in-post-g-addafli-libya.pdf>

⁴² Article 18 of Law No. 17/1986; Alison Pargeter, "Libya", in *Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, eds. Sanja Kelly and Julia Breslin (New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010), p. 22, https://freedomhouse.org/sites/default/files/inline_images/Libya.pdf

⁴³ Centre for Reproductive Rights, "The World's Abortion Laws", 2014, <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/AbortionMap2014.PDF>

⁴⁴ Libya State party report, U.N. Doc. CEDAW/C/LBY/2 (1999), p. 48, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁴⁵ World Bank, "Fertility rates, total (births per woman)", <http://data.worldbank.org/indicator/SP.DYN.TFR.TIN>

					Contraceptive Use Worldwide: ⁴⁶ <ul style="list-style-type: none"> • 49% of married women aged 15-49 are using a method of contraception, with 28% of women using a modern method; • 20% of married women aged 15-49 have an unmet need for family planning services; and • 42% of married women aged 15-49 had their demands for family planning satisfied by modern methods of contraception.
Personal rights of spouses <i>Does a woman need the consent of her spouse or guardian to work,</i>	Article 7 of the Constitution obligates the State to safeguard human rights and fundamental freedoms. ⁴⁷			Women do not need their husband's permission to obtain passports or	According to World Bank data, female labour force participation increased

⁴⁶ United Nations Population Division, "Trends in Contraceptive Use Worldwide 2015", Annex Table 1, pp. 36-42, <http://www.un.org/en/development/desa/population/publications/pdf/family/trendsContraceptiveUse2015Report.pdf>

⁴⁷ Article 7 of Libya's Constitution (2011), https://www.constituteproject.org/constitution/Libya_2011.pdf

<p><i>choose a profession, leave the house, travel, drive, receive various health services, study, etc. on her behalf? Does a woman have the right to retain her birth name upon marriage or to choose her family name? Can a woman protect her personal rights through her marriage contract?</i></p> <p><u>Applicable CEDAW Provision</u></p> <p>Article 16(1)(g) Para. 24 GR21 Para. 34 GR29</p>	<p>Article 8 of the Constitution obligates the State to ensure the right to work, education, medical care and social security of every Libyan.⁴⁸</p> <p>Article 14 of the Constitution guarantees the freedom of movement.⁴⁹</p> <p>The MDL could potentially restrict the personal rights of married women in Mauritania as a result of the inherent concept of male guardianship over women and children that is built into the law.</p> <p>In addition, while the law allows a wife to stipulate conditions in the marriage contract,⁵⁰ a fatwa issued by Dar al-Ifta in 2015 stated that even if a wife stipulates a condition to work outside the home after marriage, a husband is not bound by this condition, as it contradicts his “inherent rights” of <i>qiwama</i> in the marriage and obedience by his wife.⁵¹</p>			<p>travel.⁵²</p> <p>Married women in Libya retain their maiden names.⁵³</p>	<p>from 18% in 1990 to 28% in 2016.⁵⁴ During the same period, male labour force participation decreased from 73% to 79%.⁵⁵</p> <p>According to the 2016 UNDP Human Development Report:⁵⁶</p> <ul style="list-style-type: none"> • 66% of women over 25 have at least some secondary education as compared to 44% of men of the same age group; and • The ability of females and males to read and write a short simple sentence is almost universal.
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⁴⁸ Article 8 of Libya's Constitution (2011), https://www.constituteproject.org/constitution/Libya_2011.pdf

⁴⁹ Article 14 of Libya's Constitution (2011), https://www.constituteproject.org/constitution/Libya_2011.pdf

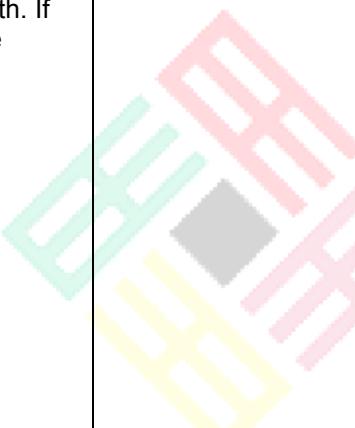
⁵⁰ Article 3 of the Marriage and Divorce Law (1984), <http://aladel.gov.ly/home/?p=1246>

⁵¹ Libyan Dar al-Ifta, ‘Fatwa No. 2235 of 2015’, <http://ifta.ly/web/index.php/2012-09-04-09-55-16/2012-09-29-15-20-45/2430-2015-03-04-07-26-56>

⁵² Alison Pargeter, “Libya”, in *Women’s Rights in the Middle East and North Africa: Progress Amid Resistance*, eds. Sanja Kelly and Julia Breslin (New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010), p. 9, https://freedomhouse.org/sites/default/files/inline_images/Libya.pdf

⁵³ Libya State party report, U.N. Doc. CEDAW/C/LBY/2 (1999), p. 4, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁵⁴ World Bank, “Labour force participation rate, female (% of female population ages 15+) (modelled ILO estimate)”,

<p>Inheritance rights</p> <p><i>Are women and men in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession? Are there procedures to address any inequalities in inheritance between women and men e.g. can a will be written, can beneficiaries agree to inherit equal shares of the estate or can the children agree to forgo their inheritance in favour of their mother upon the death of their father?</i></p> <p><u>Applicable CEDAW Provision</u> Paras. 34-35 GR21 Paras. 49-53 GR29</p>	<p>Generally, inheritance rights between women and men are unequal. Women inherit in accordance with <i>Shari'ah</i> rules as interpreted and issued by the Libyan Dar al-Ifta'. In many cases, a woman's share is half that of a man. For example, a wife inherits one-eighth of her husband's estate if they have children, while a husband inherits one-fourth. If there are no children, a wife inherits one-fourth of her husband's estate, while a husband inherits a half.⁵⁷</p>		<p>In order to address the problem of depriving women from inheritance rights, the Libyan Mufti issued a fatwa in 1973 prohibiting the practice of "<i>habs</i>" (restricting inheritance rights to males only). Subsequently Law No. 16 of 1973 was issued to outlaw <i>habs</i> and guarantee women's inheritance rights.⁵⁸ However, the practice continued and in 2013, the new Libyan Mufti issued another similar fatwa, No. 810 of 2013.⁵⁹</p>		<p>According to a media report, women continues to be deprived of their inheritance rights, especially when it comes to land and real estate in rural areas.⁶⁰</p>
<p>Violence against women in the family</p>	<p>Article 17 of the MDL states that a woman has the right to expect her husband to refrain from causing</p>			<p>Libya has social rehabilitation facilities for victims</p>	<p>According to Libya's 2014 National Family Health</p>

⁵⁵ <http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS>

⁵⁶ World Bank, "Labour force participation rate, male (% of male population ages 15+) (modelled ILO estimate)", <http://data.worldbank.org/indicator/SL.TLF.CACT.MA.ZS>

⁵⁷ UNDP, "Human Development Report 2016", Tables 5, 9, 14, pp. 214-217, 230-233, 250-253, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf

⁵⁸ Libyan Dar al-Ifta', <http://ifta.ly/web/>

⁵⁹ Law No. 16/1973 on the Cancellation of Non-Charity Endowments, <http://itcadel.gov.ly/wp-content/uploads/2015/12/law16-year1973.pdf>

⁶⁰ Fatwa No. 810 of 2013, Libyan Dar al-Ifta', <http://ifta.ly/web/index.php/2012-09-04-09-55-16/2012-10-16-13-17-33/887-2013-01-15-08-13-56>

<p><i>Are there laws that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault and violence that affect a woman's mental health which are perpetuated by traditional attitudes? Is there specific legislation that recognises domestic violence as a crime? Is the husband allowed to discipline his wife? Can a suspected perpetrator marry his alleged abused victim to avoid punishment? Are there support services for women who are the victims of aggression or abuses?</i></p> <p><u>Applicable CEDAW Provision</u> GRs 12 & 19 Para. 40 GR21</p>	<p>her physical or psychological harm.⁶¹</p> <p>Libya has not adopted specific legislation to criminalise acts of domestic violence. In 2013, the Ministry of Justice submitted a draft law aimed at supporting victims of domestic violence.⁶²</p> <p>The Penal Code contains some general prohibitions that are applicable to domestic violence. For instance, murder as well as various forms of physical and sexual violence.⁶³</p> <p>The Penal Code does not specifically criminalise marital rape.</p> <p>The Penal Code exempts rapists who marry their victims from criminal liability.⁶⁴</p>			<p>of domestic violence.⁶⁵</p>	<p>Survey:⁶⁶</p> <ul style="list-style-type: none"> • 8% of women reported being subjected to abuse; • 79% reported having experienced verbal abuse; • Half of the surveyed women said their husbands were the main abusers; • 49% of women were affected by the abuse, with 74% reported having affected with depression; • 26% of women surveyed asked
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⁶¹ قانون رقم 14 لسنة 2015م بتعديل/ بعض أحكام القانون رقم 10 لسنة 1984م بشأن الأحكام الخاصة بالزواج والطلاق وتأثراها pdf

⁶² UK Home Office, "Libya: Violence Against Women", *Country Information and Guidance*, p. 10,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/362008/CIG - Libya - Women - October 8 2014.pdf

⁶³ Penal Code (1953), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/97659/115997/F-671669284/LBY97659%20Ara.pdf>

⁶⁴ Article 424 of the Penal Code (1953), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/97659/115997/F-671669284/LBY97659%20Ara.pdf>

⁶⁵ UK Home Office, "Libya: Violence Against Women", *Country Information and Guidance*, p. 15,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/362008/CIG - Libya - Women - October 8 2014.pdf

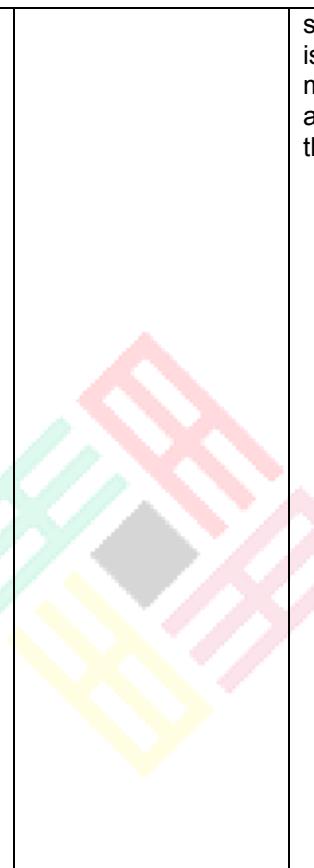
⁶⁶ Abdullah Ben Ibrahim, "Bureau of Statistics and Census issues 2014 family health survey", *Libya Observer*, 28 December 2015,

<https://www.libyaobserver.ly/news/bureau-statistics-and-census-issues-2014-family-health-survey>

				for solutions to abuse. According to information gathered by the UK Home Office: ⁶⁷ <ul style="list-style-type: none"> The prevalence of domestic violence and societal acceptance of it is relatively high; The social rehabilitation facilities are often described by women who stay there as a detention centre, rather than a voluntary shelter.
Nationality rights <i>Does a wife have the right to confer her citizenship on foreign husbands and children? Can the nationality of an adult woman be arbitrarily removed because of marriage or dissolution of mar-</i>	A Libyan man may pass his nationality to his non-Libyan wife upon marriage. However, the law does not specifically provide for a Mauritanian woman to confer her nationality to her foreign husband. ⁶⁸		In 2013 the grand mufti issued a religious ruling (<i>fatwa</i>) against Libyan women marrying foreigners. The Ministry of Social Affairs	According to information gathered by the Netherlands Office of the Commissioner General for Refugees and Stateless Person

⁶⁷ UK Home Office, "Libya: Violence Against Women", *Country Information and Guidance*, pp. 5, 15, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/362008/CIG - Libya - Women - October_8_2014.pdf

⁶⁸ Section 10 of the Nationality Law (2010), <http://www.refworld.org/pdfid/4e2d8bf52.pdf>

<p>riage or because her husband or father changes his nationality?</p> <p><u>Applicable CEDAW Provision</u> Article 9 Para. 6 GR21</p>	<p>A Libyan woman does not lose her nationality upon marrying a foreigner, except if she takes up his foreign citizenship without the approval of the General Popular Committee for the General Security.⁶⁹</p> <p>A Libyan father passes his citizenship to his children wherever they are born. A Libyan mother may only confer her nationality to her children if they are born in Libya of a father who is either stateless or whose nationality is unknown.⁷⁰</p> <p>Children of a Libyan mother who is married to non-Libyan could obtain Libyan nationality according to conditions to be set in executive rules.⁷¹ Pursuant to the Executive Order Implementing the Nationality Law:⁷²</p> <ul style="list-style-type: none"> • Article 6 provides that children of a Libyan mother and a foreign father may apply for 		<p>suspended the issuance of marriage licenses in an endorsement of the fatwa.⁷³</p>		<p>and others, in practice:⁷⁴</p> <ul style="list-style-type: none"> • The ability of Libyan women to pass nationality to their children is unclear; • Women must obtain permission from the government to marry a non-Libyan man. Such permission is difficult to obtain.
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⁶⁹ Nationality law Number 24 of 2010, sec. 5, <http://www.refworld.org/pdfid/4e2d8bf52.pdf>

⁷⁰ Articles 3-4 of the Nationality Law (2010), <http://www.refworld.org/pdfid/4e2d8bf52.pdf>; Netherlands Office of the Commissioner General for Refugees and Stateless Persons et al., "Libya: Nationality, Registration and Documents", 2014, p. 8, <http://www.refworld.org/docid/54afda3d4.html>

⁷¹ Article 11 of the Nationality Law (2010), <http://www.refworld.org/pdfid/4e2d8bf52.pdf>

⁷² Articles 6-7 of the Executive Order No. 594 of 2010 Implementing the Nationality Law of 2010, <http://nuoralhoda-72.blogspot.com/2016/02/24-2010.html>

⁷³ Netherlands Office of the Commissioner General for Refugees and Stateless Persons et al., "Libya: Nationality, Registration and Documents", 2014, p. 9, <http://www.refworld.org/docid/54afda3d4.html>

⁷⁴ Article 5 of the Nationality Law (2010), <http://www.refworld.org/pdfid/4e2d8bf52.pdf>; Netherlands Office of the Commissioner General for Refugees and Stateless Persons et al., "Libya: Nationality, Registration and Documents", 2014, pp. 8-9, <http://www.refworld.org/docid/54afda3d4.html>

	<p>citizenship only upon reaching the age of majority (18) and submission of an application;</p> <ul style="list-style-type: none">Article 7 states that minor children (born inside or outside of Libya) of a Libyan mother and a foreign father may apply for citizenship only if the father was deceased or missing (proven by court order), and by permission of their guardian. The order categorically prohibits giving Libyan citizenship to children of a Libyan mother if the father was Palestinian.			
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