**A briefing on discrimination against women in law and practice and respective HRD initiatives:**

Discrimination against women persisted both in law and practice, under the control exercised by armed groups, including those espousing a Salafi Madkhali doctrine[[1]](#footnote-1), and the general climate of lawlessness disproportionally affected women.

Below articles that have proved to be a clear shortcoming in the local legislation and policies:

1. Article 6 of the Interim Libyan Constitution of 2011 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, including on the grounds of gender. This is further elaborated in the Draft Constitution of 2017 which specifically addresses women rights and gender justice in several articles. For instance, Article 7 specifically addresses women’s rights and guarantees the rights to equality and non-discrimination. Article 49 titled “supporting women rights” also states that “the State shall commit to supporting and caring for women, enacting laws that ensure their protection, promoting their status in society, eliminating the negative culture and social customs that detract from their dignity, prohibiting discrimination against them, ensuring their right in public elections and enabling them [to have access] to opportunities in all areas. It shall also take the necessary measures to ensure that their acquired rights are safeguarded and not infringed upon.”
2. In the Libyan Political Accord (LPA) of 2016, VAW and CRSV are not specifically addressed. Article 11 of the LPA only states that the GNA shall commit itself to the formation of a Women Support and Empowerment Unit under the Presidency of the Council of Ministers, signalling some weight to women’s rights, empowerment, and political participation. The national legal framework on VAW also remains limited, with necessary legal reforms having been held back due to the ongoing conflict. The only national law directly addressing VAW is law No. 10 of 1984, which prescribes that a woman “has the right to expect her husband to … refrain from causing her physical or psychological harm.” However, the law does not refer to any enforcement mechanisms/sanction system. Libyan national law also does not specifically criminalize domestic violence, although Law No. 10 of 1984 states that “husbands should not cause physical or mental harm to their wives”. Sexual violence is addressed in the Penal Code as a crime against a woman's honour, rather than against the person, allowing the courts to focus on the woman's sexual history rather than on the crime against her.[[2]](#footnote-2)
3. The Penal Code has some general provisions that could, in theory be applied to prosecute individuals for VAW and CRSV. While the term “sexual harassment” does not exist as such in the Penal Code, some forms of harassment are sanctioned under Art 420. In addition, physical harassment such as physical and sexual assaults are also criminalized by the Penal Code (Arts. 368–381, 408, 409, 501.). The Penal Code (Art. 372-375), however, allows for reduced punishment of eight years imprisonment for a person who kills his wife, daughter, or sister if the crime is perpetrated immediately upon finding the woman engaging in extra-marital sex. If honour is the motivating factor, the penalty is reduced by a third for an act of violence that results in injuries to a female relative while an assault causing gross or serious harm is reduced to two years. The Penal Code also provides that a man who “merely” assaults his wife, daughter, or sister without causing bodily harm shall not be punished if the assault occurs in these circumstances.
4. Another major barrier to the prosecution of VAW crimes is the requirement that the victim must submit a criminal complaint. Under Libyan law, the prosecutor may initiate criminal proceedings when there is “grounded evidence” of a crime having been committed. However, according to the Article 466 of the Penal Code for certain crimes, known as private offences, the prosecutor cannot bring a case to court unless the victim has made a complaint. VAW, when committed by the husband of the victim, or one of the victims “roots or branches” would fall under this category. Stigma, fear of reprisals and economic vulnerability are other factors that decrease the likelihood of women filing complaints.
5. Finally, it is important to note that the Personal Status Law No. 70 of 1973 criminalizes adultery and Zinā, which may result in women being reluctant to lodge complaints of rape for fear that they may be prosecuted for Zinā or adultery if they are unable to prove the rape offence. [[3]](#footnote-3)
6. The 2017 Draft Law on Combating Violence Against Women in Libya, based on a joint work of some leading women and human rights organization and activists, mainly from the eastern region. Yet the Draft Law which is now presented to the Parliament/HoR, suffers from some fundamental shortcomings that is required to be improved before any legislation.
7. In 2020, the assessment of the special training course offered to the six judges appointed to the two unpreceded specialized courts established to combat violence against women and children in Tripoli and Benghazi, and jointly led by UNSMIL HRS and UN Women and the UN Team of Experts on Sexual Violence in Conflict, highlighted the immediate need to tackle the current Draft Law. This necessity also arises from this fact that Libya as a state party to CEDAW Convention, ratified in 1989, is obliged to take measures in the areas of prevention, protection, prosecution, punishment and redress to accelerate elimination of gender-based violence against women. According to article 2 (c) and (g) of CEDAW, States parties must have an effective and accessible legal and services framework in place to address all forms of gender-based violence against women committed by State agents, on their territory or extraterritorially.

1. A Salafi school of thought that originated in Saudi Arabic, espousing conservative views regarding women’s role in society. [↑](#footnote-ref-1)
2. See generally, [Libya Gender Justice - Assessment of laws affecting gender equality and protection against gender-based violence](https://libya.unfpa.org/sites/default/files/pub-pdf/Libya%20Country%20Assessment%20-%20English_0.pdf), UNDP, pps 9-11, 13-15. It is important to note that, in the second UPR cycle, Libya accepted 21 recommendations regarding the women’s rights and non-discrimination. See in particular 137.132 and 137.164 recommending the adoption of clear and enforceable provisions criminalizing VAW, including domestic and sexual violence and access to justice for through the effective implementation of laws protecting women ( see: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/30/16/Add.1, 15 September 2015). [↑](#footnote-ref-2)
3. See, inter alia: paras, 47, 48 and 53 of Summary o Stakeholders’ submissions on Libya, [A/HRC/WG.6/3/LBY/3,](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/054/01/PDF/G2005401.pdf?OpenElement) 28 February 2020; paras.15-18, Lawyers For Justice in Libya, [UPR Submission 2020](https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRLYStakeholdersInfoS36.aspx). [↑](#footnote-ref-3)