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# LEGAL GUIDE TO CHILD'S RIGHTS IN LIBYA



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Country Children Libya (Photo: Mohamed Elayib/NRC)



## 1. BACKGROUND AND INTRODUCTION TO GUIDE

The 'Legal Guide to Child Rights in Libya' is a legal resource for lawyers and humanitarian professionals working with children in Libya, including Libyan and non-Libyans, such as refugees, asylum seekers, migrants and foreign resident children. It brings together in one document the various laws, directives and policies directly relevant to the legal protection of children in Libya. By consolidating the relevant laws into a single document, practitioners will be able to get a better overall picture of the inter-connected legal framework affecting children's rights.

The guide covers the various areas of law that are relevant to the protection of children's rights including legal capacity of children, family or personal status law including guardianship, custody and age of marriage, juvenile justice and detention of children, work rights for juveniles, rights to health, education and social assistance as well as rights to legal identity and nationality. The guide is structured per thematic area of law or topic so that users can go directly to the section of relevance. Additionally, the guide sets out the various Ministries and government agencies that are responsible for children's welfare issues.

The aim of the guide is to provide an objective summary of the relevant laws and procedures; not to provide an exhaustive analysis of each area of law. A select bibliography at the end of the guide provides further references. It does not comment on the adequacy of the laws, protection issues in the country or practical challenges in implementation of laws. Nor does it provide any analysis or commentary on international human rights law other than to note some of the key international human rights law (IHRL) and international humanitarian law (IHL) treaties and regional agreements ratified by Libya.

It is part of a series of guides developed for the Middle East region<sup>1</sup> based on legal research conducted by NRC and White & Case lawyers. It also draws on past research and reports by NRC in relation to personal status and civil documentation, including research conducted by legal consultant Abdul-Azim Muhammad Al-Tahar, as well as legal research conducted by Deem Al Mahawes of White & Case lawyers.

Whilst the guide is intended to be used as a general legal resource it should not be relied upon for individualized advice for beneficiaries. Instead, legal advice should be obtained from qualified legal practitioners in relation to the particular circumstances of beneficiaries.

1 Other country guides include those for Iraq, Jordan, Lebanon, Palestine and Syria.



All efforts have been made to ensure that the guide is as complete and accurate as possible as of the date of publication. However, the legal accuracy of the guide cannot be guaranteed, particularly considering the frequent number of legislative and policy changes in Libya. Nor does the guide cover legal and administrative practices, both formal and informal, that may be prevalent in different parts of Libya including at the level of courts, government offices and local municipalities. The guide covers the legal framework up to March 2023.

## 2. INTERNATIONAL HUMAN RIGHTS TREATIES AND CONVENTIONS RELEVANT TO CHILDREN



Whilst this Guide focuses primarily on the domestic legal framework for children in Libya, **international treaties and conventions** ratified by Libya are included as a reference point and guide to the commitments made by the State for the legal protection of children.

Libya has signed various international and regional conventions and treaties relevant to the protection of children including the Convention on the Rights of the Child (**CRC**).<sup>2</sup> International treaties ratified by Libya have the force of law in Libya and constitute a higher law by which all national laws must be interpreted and amended as necessary.<sup>3</sup>

This allows practitioners, in theory at least, to use and refer to the provisions of human rights treaties ratified by Libya in individual casework and policy work. International human rights treaties provide an important normative framework and reference point, including on issues of implementation of international obligations. Many of Libya's domestic laws also reflect principles contained in these international treaties.

### 2.1 Key international human rights and humanitarian law treaties ratified by Libya

**The Convention on the Rights of the Child (CRC)**, as ratified by Libya, is the key international human rights treaty in relation to the rights of children. Many of the fundamental principles of the CRC, such as the obligation to act in the best interests of the child, are expressly incorporated into domestic law. Further selected treaties or conventions ratified by Libya with relevance to the legal protection of children's rights are set out below.

#### Key Human Rights and Humanitarian Law Treaties ratified by Libya

Name of Treaty or Convention	Ratification Date
<b>▶ Specific Child Rights Treaties</b>	
➤ Convention on the Rights of the Child (CRC)	15 April 1993
➤ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	29 October 2004
➤ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	18 June 2004

2 See the following link for details of the human rights treaties ratified by Libya; [Libya Human Rights Treaties](#).

3 According to Article 17(1), Libyan Constitutional Declaration of 2011, and to the decision of the Libyan Supreme Court, Constitutional Appeal No. 1/57 issued on 23 December 2013. This remains subject to any reservations Libya has made to human rights treaties it has signed and ratified.



Name of Treaty or Convention	Ratification Date
<b>▶ General International Human Rights Treaties</b>	
› Universal Declaration of Human Rights (UDHR)	N/A
› Convention on International Civil and Political Rights (ICCPR)	15 May 1970
› Convention on Economic, Social and Cultural Rights (ICESCR)	15 May 1970
› Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)	16 May 1989
› Convention on the Elimination of Racial Discrimination (CERD)	3 July 1968
› Convention on the Rights of Persons with Disabilities and its Optional Protocol (RRPD)	13 February 2018
› Convention on the Elimination of Discrimination Against Women (CEDAW)	16 May 1989
› Optional Protocol to the Convention on the Elimination of Discrimination Against Women	18 June 2004
› Convention relating to the Status of Stateless Persons	16 May 1989
› Convention on the Reduction of Statelessness	16 May 1989
<b>▶ International Humanitarian Law Treaties</b>	
› Geneva Conventions, 1949	22 May 1956
› Additional Protocol (I) to the Geneva Conventions	7 June 1978
<b>▶ Treaties relevant to Work Rights and Child Labour<sup>4</sup></b>	
› ILO Convention 182 on the Elimination of the Worst Forms of Child Labour	4 October 2000
› International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	18 June 2004
› ILO Convention 138 on the Minimum Age for Admission to Employment and Work (Minimum age specified: 15 years)	19 June 1975

**As per Libya's ratification of the CRC in 1993<sup>5</sup>** it is required to submit periodic reports to the Committee on the Rights of the Child ("CRC Committee") on the status of child rights (as set out in the CRC), and on the steps taken by Libya towards the implementation of the CRC. The latest report was submitted by Libya on the 11th of March 2021 (for a report due on the 14th of November 2008).

4 See the following link for a full list of; [ILO Conventions Ratified by Libya](#).

5 Ratification Status for the Convention on the Rights of the Child taken from the UN Treaty Body Database [Libya CRC Ratification](#).



In this last periodic report prepared by the Higher Committee for Childhood, Libya stated the main challenges experienced in protecting children's rights in Libya as follows:

- The difficulty in providing information and data on children's issues, especially during the period 2011 to 2019.
- Poor documentation of programs and activities aimed at children, as well as the loss of archives of some institutions due to instability in established premises.
- The report highlights the drafting of a comprehensive children's rights' code, which would ensure that the various legal provisions concerning children are collected into one document and that the shortcomings of Libyan legislation are covered.

The CRC's Optional Protocol on the Involvement of Children in Armed Conflict provides additional protection for children caught up in conflict, either as civilians or combatants. During the its ratification of the Optional Protocol, Libya signed a declaration noting that the legal age for volunteering to serve in the Libyan armed forces is 18. Further protection is afforded to children in armed conflicts through Common Article 3 to the Geneva Conventions (1949), which Libya ratified in 1978 and is therefore legally bound by.

Whilst Libya has not signed the 1954 Refugee Convention, or the 1961 Protocol relating to the Status of Refugees, it has signed the 1968 Organisation for African Unity (OAU) Convention for Refugees, which is considered more comprehensive than the UN Refugee Convention. In addition to the categories of political and other refugees in the UN Convention, the OAU Convention include refugees in humanitarian conditions and emergency situations such as disasters, earthquakes, volcanoes, fires, floods and other situations. Libya has formed a committee of competent authorities to study Libya's accession to the Refugees Convention.

However Libya has signed both the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on Reducing Statelessness.

Libya's ratification of the Optional Protocol to CEDAW allows persons in Libya, including women and girls, both Libyan and non-Libyan, to lodge individual complaints with the UN Committee on the Elimination of Discrimination Against Women ("CEDAW Committee") against alleged breaches by Libya of their CEDAW obligations, subject to reservations made by Libya to CEDAW.<sup>6</sup>

## 2.2 Regional Agreements

**Regional treaties** can be a useful point of reference for the interpretation of human rights standards within a social or cultural context. Whilst such treaties are not formally binding on Libya they are relevant as reflecting to some degree regional, cultural and religious values and shared commitments and can be invoked in support of broader child rights arguments. Of particular relevance is Libya's accession to the African Charter on the Rights and Welfare of the Child (ACRWC),<sup>7</sup> which is considered the most important instrument for children's rights within the African Union human rights system.

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6 For example, Libya has made a reservation to Article 2 of CEDAW on the right to non-discrimination and to Article 16 (c) and (d) on non-discrimination on all matters relating to marriage and family relations stating that the Convention should be implemented in accordance with *Sharia* law as well as a general reservation that accession cannot conflict with personal status laws derived from *Sharia*.

7 [African Charter on the Rights and Welfare of the Child](#), ratified by Libya in 2000.





Regionally, the Arab Charter on Human Rights, as ratified by Libya in 1986, protects a wide range of human rights including those relevant to children. It protects the right to a legal identity<sup>8</sup>, to education<sup>9</sup> and the right of youth to greater opportunities to develop their physical and mental abilities.<sup>10</sup> The family is acknowledged as the fundamental unit of society and the State is obliged to ensure special protection for the family and children.<sup>11</sup>

The Cairo Declaration on Human Rights in Islam list a number of human rights specifically applicable to children including the prohibition on discrimination on the basis of the child's parent's or legal guardian's race, color, sex, language, religion, sect, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.<sup>12</sup> The Declaration further notes the right to such measures of protection as are required by the child's status as a minor, including "nursing, education as well as material, and moral care, on the part of his family, society and the State".<sup>13</sup> Other rights include the right to birth registration and nationality.<sup>14</sup>

#### Other regional human rights treaties signed by Libya include the following:

Name of Treaty or Convention	Ratification Date
> African Charter on Human and Peoples Rights (Banjul Charter)	1986
> Protocol to the Charter on Human and Peoples Rights on the Establishment of an African Court on Human and Peoples Rights	2003
> Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol)	2004
> Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention)	1981
> African Charter on the Rights and Welfare of the Child (ACRWC)	2000

8 Article 18, Arab Charter on Human Rights.

9 Article 34, Arab Charter on Human Rights.

10 Article 39, Arab Charter on Human Rights.

11 Article 38, Arab Charter on Human Rights.

12 Article 7(a) [Cairo Declaration](#) of Human Rights in Islam.

13 Article 7(a), Cairo Declaration.

14 Article 7(b), Cairo Declaration.



Children at school (Photo: ECHO in Libya)

### 3. NATIONAL POLICY FRAMEWORK



The national policy framework covers the overall legislative and administrative structure put in place by Libya to ensure the protection of children. This includes policies and commitments made by the government as well as government agencies responsible for implementing the protection of children's rights.

#### 3.1 Government Policies and Measures of Implementation

The family is expressly protected in accordance with the Libyan Constitutional Declaration; the State “protects and encourages marriage, guarantees the protection of motherhood, childhood and people of old age, and takes care of children, youth and people with special needs.”<sup>15</sup> The Constitution also guarantees the right to work, education, health care and social security for all citizens, as well as other rights including freedom of movement, expression, association, the right to a fair trial, the prohibition against torture and many other key rights.<sup>16</sup>

Libya has sought to include the Arab Model Plan for Education on Human Rights Principles for the period (2009-2014), which aims to integrate human rights into the educational system in the various educational stages in a way that ensures the upbringing of generations who believe in human rights.

Libyan law provides for the protection of many of the rights recognized in the CRC. The means of legal protection vary, depending on the nature of those rights:

**Personal status** (such as the protection of minors and matters of custody, maintenance and inheritance). The available remedies are set out in the Code of *Sharia* Procedure and the Code of Civil Procedure, which detail the processes to be followed in order to institute proceedings in a competent court.

**Civil matters** (such as culpable liability and the performance of obligations specified in the Civil Code). The Code of Civil Procedure sets out the methods to be followed in instituting proceedings in a competent court which may be able to provide a remedy in satisfaction of the claim and award compensation for damage.

15 Article 5, Constitutional Declaration.

16 Article 8, Constitutional Declaration.



**Criminal claims** made in order to protect the child from forms of abuse within the family and home. The Penal Code cites 34 circumstances in which protection is essential and which are treated as matters of public claim to be pursued by the Department of Public Prosecutions before the competent criminal court. Failing any such action by the Department of Public Prosecutions, the injured party may directly institute criminal proceedings by submitting an initiatory pleading of misdemeanour to the competent court. The injured party may also seek a compensatory award for any moral or physical damage which has been suffered. Likewise, the injured party may intervene as a civil plaintiff in any criminal court proceedings instituted by the Department of Public Prosecutions.

**Enforcement of any administrative decisions issued by the competent administrative authority.** The concerned party may seek the necessary compensation from the administrative division of the Court of Appeal in settlement of the administrative and civil aspects of the claim.

### 3.2 Ministries and National Agencies Responsible for Child Welfare Issues

Libyan State institutions with responsibility for child protection include the following:<sup>17</sup>

- **The Ministry of Social Affairs** develops and implements policies in relation to social issues in Libya, including protection of vulnerable populations such women, children, disabled persons and other specific groups. The Ministry also administers social assistance programmes through various government agencies including the Social Solidarity Fund, Social Security Fund and the Marriage Support Fund.
- **The Department of Family and Children** provides protection support for women and girls facing gender-based violence and provides policy guidance on legislation relevant to the situation of women in Libya.
- **The Department of Humanitarian Affairs and Assistance** responds to humanitarian crises in Libya including both natural disasters and conflicts. It assesses the humanitarian needs of families in Libya and coordinates a response to those needs.
- **The Department for Affairs of Persons with Disabilities** provides support and health services to persons with disabilities. It conducts disability assessments, issues health cards, provides housing for disabled persons and manages programmes for persons with disabilities.
- **The Higher Committee for Children** develops policies and strategy, reviews and proposes legislation, and makes recommendations in relation to children's issues in Libya. It is established as a separate body under the Council of Ministers. It also works with civil society organisations and government authorities on issues relevant to the rights and well-being of children.
- **The Public Defenders Unit** provides free legal aid to eligible persons requiring legal representation for court proceedings. It provides free legal services to juveniles in matters of criminal law.
- **The Social Solidarity Fund** manages care centres for persons with disabilities, persons without family care and juveniles as well. Through its Department of Social Development, it administers the Basic Pension for low-income and vulnerable Libyan families as well as the Social Assistance Benefit for the Poor as well as providing marriage, education, and health benefits.
- **The Social Security Fund** implements contributory benefits such as the old-age pension, survivors insurance, family allowances, and total /partial invalidity insurance to all workers, including employees and the self-employed. It also administers other one-off grants and short-term benefits.
- **The Women and Child Affairs Committee** within the Libyan Parliament consists of seven members and is competent to: 1) review the compatibility of legislation in force relating to women and children, 2) submit reports to the Parliament on draft laws, 3) provide opinions to other competent committees and 4) follow-up with the recommendations and decisions referred by the Parliament related to women and children.



- **The Commission of Civil Society** is affiliated with the Ministry of Culture and Civil Society<sup>18</sup> and is responsible for registering organizations, providing logistical and technical support, and advising civil society organizations, including those dealing with children's or family issues.
- **The National Committee for Human Rights** in Libya is an independent public body with legal personality.<sup>19</sup> It has a wide-ranging mandate with the following responsibilities:
  - Studying human rights files, developing the necessary solutions for them, suggesting appropriate solutions, according to the circumstances, and referring them to the competent authorities for implementation.
  - Studying the reports related to the human rights situation in Libya issued by various national and international bodies, setting controls for responding to them, approving the responses prepared by the concerned authorities and referring them to the Ministry of Foreign Affairs and International Cooperation to take the necessary measures in their regard.
  - Proposing measures to promote and protect human rights to prevent any violations in this regard, putting in place remedies for possible abuses in their regard, and informing the related authorities to correct the situation in accordance with the law.
  - Expressing their opinions on draft laws related to human rights.
  - Studying human rights conventions and preparing the necessary legislative proposals to harmonize national legislation with the provisions of these conventions, and to carry out research and scientific studies to develop human rights law.
  - Receiving complaints and reports of any violations of human rights, researching them, and referring them to the competent authorities to undertake their legal procedures regarding them.
- **The Commission of Civil Society and the National Committee for Human Rights** were established based on Law No. 5 of 2011, in line with Paris Principles setting up the National Transitional Council. The aim is to promote and defend public freedom, monitor and document violations, and support and encourage civil society. An annual and semi-annual report are issued on its activities.

The State also makes provision for the best interests of the child through the **social welfare system** established in 1979, which includes care homes for children, namely nursery homes, kindergarten homes, boys' and girls' homes, and juvenile care homes.

### 3.3 National Laws

The national laws most relevant for child rights in Libya are as follows:

- **The Libyan Constitutional Declaration issued in 2011 and its amendments.** Article 5 explicitly states that "The State shall guarantee the protection of motherhood, childhood and the elderly. The State shall take care of children, youth and the handicapped". In accordance with Article 8, "the State guarantees equal opportunities and works to provide a decent standard of living, the right to work, education, health care and social security for every citizen." Other provisions of the Constitution also guarantee equal rights and protection to all citizens including children.
- **Law No. 5 of 1997 on Child Protection.**<sup>20</sup> This law lists State obligations, child rights and specific protections available for the protection of children in Libya. This includes compulsory education and a prohibition on child labour.

18 Established according to Resolution No. (649) of 2013 issued by the Council of Ministers amending Resolution No. 12 of 2012 regarding the Establishment of a Civil Society Organizations Support Centre.

19 Formed according to the General People's Committee Resolution No. 557 of 1957

20 See English translation of the [Child Protection Law](#).



- **Law No. 17 of 1992 on Regulating the Condition of Minors.** This law defines the age of majority and the civil rights of the child. It regulates the appointment of guardians for children as well as setting out the authority and responsibilities of guardians, including management of the financial affair of minors.
- **Law No. 10 of 1984 on Marriage and Divorce, as amended,** sets out the requirements for marriage, divorce and the obligations of maintenance and alimony following divorce. Under Libyan personal status law, a person has full capacity if they have a sound mind and have reached the age of majority, which the law sets at 18. Before that age, a person cannot contract a marriage except with court permission for the sake of an interest or necessity following approval by their guardian. Law no. 14 of 2015 amended Law No. 10 of 1984, most importantly by **reducing the age of capacity for marriage to 18 years.**<sup>21</sup>
- **The Penal Code of 1954** lists the criminal offences punishable by law in Libya, including crimes specifically targeted at children, such as abduction and sexual assault of minors. It also contains crimes of neglect of children.
- **The Code of Criminal Procedures of 1953** sets out the procedures for the investigation, prosecution and trial of criminal offences in Libya. It includes special protections for juvenile offenders, including establishment of juvenile courts, protective measures and care, supervision and rehabilitation arrangements for juveniles.
- **Law No. 12 of 2010, the Labour Code,** sets out work rights, conditions and entitlements in Libya. It includes the minimum age of work in Libya and special protections for working age juveniles.
- **Law No. 13 of 1980 on Social Security.** The law defines 'social protection' in Libya and establishes the right to social security for Libyans and non-Libyans. Article 29 mentions the need for special care in nurseries, care homes and residential kindergartens for children..
- **Law No. 16 of 1985 on Basic Assistance** establishes the system for basic social assistance to vulnerable groups in Libya including elderly persons, persons with disabilities, orphans, widows and the unemployed. Article 7 mentions children who are entitled to basic assistance, such as orphans.
- **Law No. 27 of 2013 on Allowances for Children and Wives.** The law establishes the Wives and Children's Grant, which provides financial assistance to Libyan children and to certain categories of eligible Libyan women.
- **Law No. 5 of 1987 on Persons with Disabilities.** The law sets out the rights of disabled persons to special rights, health services and financial assistance.
- **The law issued on 15 October 1955 concerning Protection for Juveniles and Homeless people.** The law provides a definition of homelessness and proscribes the act of begging as a misdemeanor. The law establishes the jurisdiction of Juvenile Courts over cases of homeless juveniles.
- **Law No. 109 of 1972 regarding the role of Educating and Guiding Juveniles.** Article 2 stipulates the roles of the Ministry of Youth and Social Affairs, which manages and supervises the education and guidance of juveniles. The Minister of Youth and Social Affairs is authorized to provide direction on the upbringing of juvenile offenders including procedures for guiding and educating juveniles spiritually, socially, nationally and nationally, and training them in useful works and crafts that can provide them with the means of a decent livelihood after their release from a juvenile facility.
- **Law No. 18 of 2013 regarding the Right of Cultural and Linguistic Components.** Amazigh, Tuareg, and Tebu languages shall be considered linguistic and cultural components of Libyan society. The Ministry of Education must provide textbooks, teachers and all the necessary possibilities for individuals to learn in their own language.
- **Law No. 18 of 1963 on Personal ID cards.** Every person residing in Libya over the age of 16 must obtain a personal ID card, except foreigners and non-working women.
- **Law No 20 of 2007 regarding the Supervision and Follow-up Process for Residential Social Care Institutions for Children.** The benefits provided by the Social Welfare Fund include:- management of social care institutions, including institutions for the care of the disabled and the elderly, institutions for the care and guidance of juveniles, public nurseries and institutions for women's care.

21 The age of marriage was previously 20 years.



### 3.4 Child Protection Law

**The Child Protection Law No. 5 of 1997<sup>22</sup>** is the main reference in Libya for the legal protection of children. **The law defines a “child” as any person under 16 years old, including a foetus.**

It provides that **education shall be compulsory for all children**, including children with disabilities.<sup>23</sup>

**It also approves the establishment of the Higher Committee for Childhood<sup>24</sup>** to develop the necessary plans and programs for childcare, and to work on preparing and equipping squares, playgrounds, gardens, children’s services facilities and nurseries for the purpose of children growing in healthy safe and secure conditions. It is obligatory to allocate funds annually from the budget of the relevant sectors for the implementation of decisions and laws that encourage and urge children to engage in all recreational activities.

The law permits women sentenced to prison, when pregnant or breastfeeding, to **postpone the execution of the penalty** for a period of up to one year after giving birth. In all cases, the law guarantees the provision of appropriate health conditions for pregnant and breastfeeding women inside prison.

The law obliges the State and the competent bodies to establish **full care homes and shelters for children** who do not have a guardian, and to grant children of unknown parents the right to have a name, birth registration and a birth certificate, to obtain identity cards and passports as well as family booklets.

The law provides authority to judicial affairs officers to monitor care homes for children and investigate all reported cases of child abuse and mistreatment. Child labour is prohibited, except when children are working as part of vocational training and with their consent.<sup>25</sup>

### 3.5 Principle of Non-discrimination

Libyan legislation does not differentiate between boys and girls and the provisions of the Constitutional Declaration apply to adults and children alike.

Examples of **non-discrimination and the principle of equal treatment between genders** in Libyan law are as follows:

- Article 2 of Law No. 95 of 1975 regarding **Compulsory Education** stipulates that education at the primary level is a right and duty for boys and girls, and it is free in all schools established by the state.
- **The minimum age for marriage** for both men and women is 18. Forcing a boy or girl to marry against their will is prohibited. However, a girl or boy under the age of 20 may be married with court authorization, if they have the consent of their parent or guardian.<sup>26</sup>
- As for **sexual consent**, the penalties for sexual intercourse and indecent assault in the Penal Code apply to both males and females equally. The law punishes anyone who engages in sexual relations with a person under the age of 18, regardless of whether they are male or female and regardless of whether it was done with the consent of the minor.

22 [Child Protection Law](#), in English.

23 Article 9, Child Protection Law.

24 Article 12, Child Protection Law.

25 Article 10, Child Protection Law.

26 Article 2, Law No. 10 of 1984.



School yard (Photo: ECHO in Libya)

## 4. LEGAL CAPACITY OF CHILD



Children in Libya are recognized as having different levels of legal capacity for different issues under the law. The age of full legal capacity is 18 years old whilst children are accorded other rights and responsibilities at a younger age, such as the right to control assets from age 15 onwards and the age of criminal responsibility which is set at age 14.

### 4.1 Definition of Child

There is no definite statutory definition on the age of the child under Libyan law. The CRC, as ratified by Libya, notes that a child is "... every human being under the age of eighteen, unless they attained the age of majority before that under the law applicable to them..."<sup>27</sup> Domestic legislation, such as Law No. 17 of 1992 on Regulating the Conditions of Minors, implies that a child is a person below the age of 18, noting that "the age of majority is 18 years."<sup>28</sup> However, other domestic law, such as the Child Protection Law and Law No. 5 of 2006 appears to define a child differently, noting that a child, covered by the provisions of the law is someone "who has not yet reached the age of 16."<sup>29</sup>

### 4.2 Age of Majority and Capacity to take Legal Action

#### Age of Legal Capacity

The age of full legal majority in Libyan law is 18.<sup>30</sup> However, children are protected from the time of pregnancy, including as a foetus in the mother's womb.<sup>31</sup> A person has human personality as a natural person from the date of birth and is thus capable of taking actions and being the subject of State responsibility throughout their life.<sup>32</sup> However, minors under the age of seven (7) years old are considered too young to be able to discern or fully understand their actions and are thus considered incapable of exercising their civil rights in their own capacity.<sup>33</sup>

27 Article 1, CRC.

28 Article 124, Law No. 17 of 1997.

29 Article 1, Child Protection Law, Article 1 of Law No. 5 of 2006.

30 Article 124, Law No. 17 of 1997.

31 Article 1 of Law No. 5 of 2006.

32 Article 1, Law No. 17 of 1992.

33 Article 3 of Law No. 17 of 1992.



In civil proceedings, the statements of children under the age of 14 are not taken on oath and are used only for evidentiary purposes.<sup>34</sup> In criminal proceedings, witnesses under the age of 14 may give unsworn testimony for evidentiary purposes only whilst witnesses aged 14 or over must take an oath before giving testimony.<sup>35</sup>

### Legal Age of Work

According to the Labour Law No. 12 of 2010 the legal working age is 18.<sup>36</sup> This is the same age for eligibility for appointment in the civil service.<sup>37</sup> Whilst the age of full legal capacity is 18, minors from the age of 15 may control assets, such as money and property they own or have inherited, if authorized by their legal guardian and approved by a Court.<sup>38</sup>

### Age of Marriage and Sexual Relations

The legal age of marriage in Libya is 18 years old although the court may authorize marriage before this age based on “the interest of the parties” or “the necessity of the situation” with the consent of the guardian and as decided by the Court.<sup>39</sup> The law sets no minimum age for the derogation. As sexual relations are only legally authorized and possible in the context of marriage, the age of consent to enter sexual relations is dependent on whether the parties are in a valid marriage or not. The age of marriage in Libya is 18 years old but judges have the discretion to authorize an earlier marriage, based on the situation and guardians’ consent.<sup>40</sup> Sexual intercourse outside of marriage is punishable as adultery by up to five years imprisonment<sup>41</sup> and the law also penalises other sexual offences against minors under the age of 18.<sup>42</sup>

### Legal Capacity to manage Financial Affairs

Individuals who have not reached the age of maturity (i.e 18) are not permitted to have direct access to their finances. However a guardian with leave from a competent court may choose to grant a child of at least 15 years of age full or restricted access to manage all, or some, of their finances with supervision from the guardian. The authorised minor is considered fully competent in the management of their finances, and the permission may be revoked or restricted by the guardian where they consider this necessary.<sup>43</sup>

### General Restrictions on Legal Capacity

There are general restriction on the legal capacity of any persons with limited intellectual capacity. Any actions by persons with diminished capacity are declared null and void if the other party knows them.<sup>44</sup> No one is criminally liable if they are incapable and do not have the requisite capacity and understanding to commit the crime.<sup>45</sup>

## 4.3 Age of Criminal Responsibility

The age of criminal responsibility under the Libyan Penal Code is 14 years old. However, a judge may impose appropriate preventive measures on minors who commit crimes between the ages of seven and fourteen.<sup>46</sup>

34 Article 183, Code of Civil and Commercial Procedures.

35 Article 256, Code of Criminal Procedures.

36 Article 27, Labour Law.

37 Article 18, Civil Service Law No. 55 of 1976.

38 Law No. 17 of 1992.

39 Article 6, Law No. 10 of 1984. The age of marriage was 20 years until amended by Law No. 14 of 2015 and reduced to 18 years

40 Article 6, Law No. 10 of 1984

41 Article 407, Penal Code

42 For example, Articles 407,408, 409, Penal Code.

43 See Article 14, Law No. 17 of 1992

44 The Civil Code of 1953 describes persons with diminished legal capacity as those who are insane, imbeciles, or suffer from dementia, foolishness or neglect. See also Article 15 of Law No. 17 of 1992

45 Article 83, Penal Code. See also Article 84, Penal Code.

46 Article 80, Penal Code.





Adolescent Boys Club (Photo: Waed Altireeki/NRC)

## 5. LEGAL IDENTITY, CIVIL STATUS AND REGISTRATION OF CHILDREN



### 5.1 Birth Registration

**National identity numbers are to be provided to every Libyan child from birth**, which is also proof of acquisition of Libyan nationality.<sup>47</sup> The legislation notes that the national number is the main source of national administration to prove personal data and prevent forgery or conflicts between persons with similar names or surnames.<sup>48</sup>

The Civil Status Authority issues the national number based on the person's data in the civil registry. The national number is a prerequisite for entitlement to documents and for obtaining any public services required by any citizen related to their life affairs.<sup>49</sup>

Data to be included in the Civil Status Registry for every individual includes the following:<sup>50</sup>

- The national number
- The full name
- The name of the mother
- Date of birth
- Place of birth

The national database must include the following vital statistics data for each individual: fingerprint, eye print, photo and signature. This database is complementary to the Libyan citizen's data, which contained in the civil registry database.

47 Article 4, Law No. 8 of 2014.

48 Article 4, Law No. 8 of 2014.

49 Article 4, Law No. 8 of 2014.

50 Article 3, Law No. 8 of 2014.



According to the Civil Status Law,<sup>51</sup> the Civil Registry Office has the responsibility of recording vital events of foreigners and maintains records for them. Within the Libyan Civil Registry, there is a specific department for foreigners. The Civil Status Law sets out the procedures for authentication of such records for foreigners.<sup>52</sup>

### 5.1.1 Issuance of birth certificates

The registration of birth in Libya is compulsory at the Civil Registry and issuance of birth certificates is regulated by Law No. 36 of 1968. The birth certificate is the primary proof of identity for every child. It contains the date and place of birth and is the primary proof of the parent's relationship and legal filiation with the child. Without the birth certificate, the child cannot be added to the family booklet / paper and therefore cannot obtain a national number and prove his or her nationality. The birth certificate is one of the basic requirements for enrollment in schools.

Primary responsibility for registration of birth with the Civil Registry lies with the father of the child. The person with second responsibility is the next adult male relative followed by the closest female relative who attended the birth, typically the mother. If none of these persons are available, the third person entitled to register the birth is a person who lives in the same residence as the mother. The fourth person is the midwife or doctor who attended the birth. The fifth person in line is the *mukhtar* or the *sheikh* of the tribe.

The **birth notification document** to be provided at the Civil Registry when reporting a birth should include the following information:

- Date, time and place of birth.
- The sex of the child (male or female).
- The name and surname of the newborn.
- The parents' name, surname, nationality, religion, profession, age and place of residence.
- Type of birth (single - twin - triple - quadruple).
- The full name, address, age, profession and relationship of the reporter to the newborn.

Doctors, midwives, and directors of hospitals are required to provide birth notifications if they facilitated the birth or for any births in medical facilities. When a birth takes place at home without the attendance of a medical professional, the parents are required to call a medical professional to the home to check the newborn and prepare the birth notification.

Birth registration must be done within 10 days of birth, and the declarant should provide the following to the Civil Registry office:

- A birth registration form filled.
- A hospital or community health center form confirming the birth (**called a birth notification**).
- Health care vaccination card.
- Family booklet.

A fine of 10.5 Libyan dinars (LYD) applies for births declared after 10 days. If the birth has not been registered after one year, a committee shall be formed in the municipality of the birth, and the fine is 50LYD.

The authority responsible to receive birth declarations is the **Civil Registry office of the place of birth**, if there is an office. If there is no office in the region, then the declaration will be made to the *mukhtar* or the *tribal sheikh*. He should inform the Civil Registry office in the area in which he resides within ten days from the date he is informed of the birth, send the registration form to the office mentioned, and retain a copy.

51 Article 2, Civil Status Law.

52 Article 10, Civil Status Law.



**Upon submission of the declaration, the Civil Registry will verify all documents provided and the birth certificate is usually available after five working days.**

Children born outside marriage will obtain a birth certificate only after obtaining a Court decision to establish the filiation. Having sexual relations outside marriage is considered a crime in Libya, according to the Libyan Penal Code. If children are born outside of wedlock, their filiation must be established in front of the Court first, then a birth certificate and civil status can be issued to them.

To obtain a Libyan birth certificate, non-national applicants must send all relevant information (including name, date and place of birth, and full names of parents) to their respective Embassy in Tripoli. That Embassy will then make a formal request to the Ministry of Foreign Affairs to obtain the certificate from the appropriate municipality or Civil Registry office. For foreigners staying in the country irregularly, legal stay is a prerequisite for many civil registration processes including birth registration, and this is a huge barrier. Foreign nationals in an irregular situation or without a marriage certificate (lost or traditionally married) can often only secure the first step of the process: i.e., obtaining a birth notification from the hospital where the birth took place.

### 5.1.2 Late Birth Registration

Registering children after they turn one year old follows a different process. It consists of two steps: 1) obtaining a decision by the Committee for Unregistered Children; and 2) obtaining the birth certificate.

A payment of a fine for late registration is required as described above. An application must be submitted to the Committee for Unregistered Children, which covers both Libyans and well as non-Libyans children. The application includes several documents such as three copies of the birth notification forms, which need to be filled in, signed, and stamped. The signature of three witnesses is also required. The applicant is responsible for paying the fine and attaching the payment receipt. The application file is shared with the Civil Registry, which will confirm whether the child was ever registered. A signed and stamped confirmation of the lack of registration from the Civil Registry will be included in the application pending in front of the Committee for Unregistered Children. The committee members will meet to examine the application file and estimate the age of the applicant. The decision of the committee is final and will be notified to the concerned person in order for the registration to be completed accordingly.

## 5.2 Registration and Civil Documents

### Issuance of Identity Cards and Family Booklets

Children over the age of 16 are entitled to obtain a Libyan identity card, however children under the age of 16 are not required to carry any documents confirming their identity.<sup>53</sup> The request shall be made at the national Civil Registry office, where their fingers print will be taken.

Foreigners may also request a personal identification card although they are exempted from the general requirement that all persons resident in Libya over the age of 16 must have an identity card.<sup>54</sup> In order to obtain a personal identification card, foreigners must have legal residency in Libya.

<sup>53</sup> Article 1, Law No. 18 of 1963 regarding Personal ID Cards.

<sup>54</sup> Article 1, Law No. 18 of 1963. This applies to foreigners who are covered by Law No. 17 of 1962 regarding the Entry and Residence of Foreigners in Libya.



## Passports

Children up to the age of 16 are included on the passports of their parents, provided that they hold Libyan nationality.<sup>55</sup> After this time they are eligible for their own ID card and passport and do not require parental consent to obtain a passport.

Temporary travel documents can be issued to Libyan nationals who have lost their passports.

## Travel documents for non-Libyans

Resolution No. 472 of 1985 in execution of Law No. 14 of 1985 regarding Travel Documents states that non-Libyan nationals, or persons who are unable to prove Libyan nationality, can theoretically obtain temporary Libyan travel documents in the following categories:

- Refugees who are recognised as such in Libya (in practice not applied).
- Persons who are stateless or who do not have a fixed nationality.
- Those who, for political reasons, are unable to obtain travel documents from the countries to which they belong.
- Returnees who prove their affiliation with Libyan origin and have not obtained Arab nationality proof certificates.<sup>56</sup>

In accordance with the same regulation, mothers and children under 18 of the groups mentioned above are also eligible for temporary travel documents.<sup>57</sup> The issuance of temporary Libyan travel documents for the first three categories (refugees, stateless persons and persons with political issues) is subject to the approval of the competent public authorities. If they wish to permanently leave Libya, they will be granted temporary travel documents that are valid for a period of three months only.<sup>58</sup>

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55 Article 5, Law No. 4 of 1985.

56 Article 15, Resolution of No. 472 of 1985, namely the Executive Regulations to Law No. 4 of 1985 regarding Travel Documents.

57 Article 15, Resolution of No. 472 of 1985, namely the Executive Regulations to Law No. 4 of 1985 regarding Travel Documents.

58 Article 15, Decree No. 472 of 1985 Executive Regulations of Law No. 4 of 1985.



School pack (Photo: NRC)



## 6. NATIONALITY AND NON-NATIONALS, INCLUDING FOREIGN RESIDENTS

### 6.1 Eligibility for Nationality

Libyan nationality is primarily derived paternally. Nationality can only be derived from the Libyan mother if the children are born in Libya and are born of a non-Libyan father who is either stateless or his nationality is unknown.<sup>59</sup> Executive rules may also specify other circumstance where Libyan mothers are able to pass their nationality to children where the father is non-Libyan.<sup>60</sup>

The Nationality Law stipulates that the following categories of persons are eligible for Libyan nationality:

- Everyone who was born in Libya to a Libyan father, if his or her father's nationality was acquired by virtue of his birth there or by his naturalization.
- Anyone born outside Libya to a Libyan father, provided the birth of the son or daughter is registered within one year. Registration within a year is a pre-requisite for eligibility for Libyan citizenship, and applications can be made at the Libyan Embassy of the country of birth, or any other agency approved by the Libyan Ministry of Interior.
- Everyone who was born in Libya to a Libyan mother and unknown or stateless father.
- Persons born in Libya where the parents are unknown.
- Persons of Libyan origin and born before 7 October 1951 who do not reside in Libya provided one of the following conditions is applicable:
  - He/she is born in Libya.
  - He/she is born outside Libya and his/her father or grandfather from the father's side is born in Libya.
  - People with special expertise and high qualifications that Libya needs.
  - A foreign woman married to a Libyan citizen, if the marital relationship continues for a period of no less than two years before submitting the application.
  - Widows and divorcees of Libyan citizens.
  - Children who have reached the age of majority and have not been included in their father's nationality certificate.
  - Those who provided great or distinguished services to Libya.

59 Articles 3-4, Law No. 24 of 2010 Nationality Law.

60 Article 11, Law No. 24 of 2010.



Children of Libyan mothers and non-Libyan fathers may apply for Libyan nationality only upon reaching 18 years of age, but only if their non-Libyan father is deceased or missing. This must be proven with a death certificate and court order respectively.<sup>61</sup> Libyan nationality cannot be conferred to children of Libyan mothers if the father is Palestinian.

## 6.2 Proving Nationality

For cases in which evidence of Libyan nationality is not clear, a Central Committee has been established to study applications to obtain Libyan nationality.<sup>62</sup>

The Committee has oversight of the local procedures through the formation of sub-committees in the regions, and will receive applications for Libyan citizenship, for the following five categories:

- Children of Libyan citizen mothers who reached the age of puberty. If the child is below 18 years old, he/she is eligible to apply for nationality by proving the death of the father or his loss by a court decision. Children from Libyan mothers and Palestinian father are not eligible to apply based on this decision. However, the committee has the power to consider any requests for humanitarian reasons.
- Wives/widows/divorcees of Libyan husbands.
- Children of naturalised citizens who were not included in their father's nationality certificate.
- Those of Libyan origin lacking proof of this.
- Persons subject to decisions issued to grant nationality and determination of their authentication (past decision review by the committee).

According to Law No. 24 of 2010, Libyan nationality can only be established according to the following criteria:<sup>63</sup>

- Evidence provided to prove the applicant's Libyan origins must be on the basis of legal documents demonstrating that such is the case.
- A decree shall be issued by the Secretary of the General People's Committee on Public Security to specify the documents required as proof of Libyan origins. Witness testimonies will not be accepted as proof of origin.
- The individual applying for Libyan nationality must be included in the registries of the Brethren Office or the People's Bureau, which is the consular list of Libyan expatriates in the foreign countries established by Libyan consular services.

## 6.3 Stateless Persons

An estimated 30% of the population in southern Libya (between 150,000-200,000 persons) are of **undetermined legal status**: neither Libyans nor foreign nationals. They are mainly composed of Arab returnees, Tubu and Touareg (Aouzou) communities.

The principles for citizenship in Libya were first laid out in the 1951 Constitution and the first comprehensive citizenship law was passed in 1954. Once the "original inhabitants" of Libya had been registered, a process that lasted for much of the 1950s, access to Libyan citizenship was restricted. Many categories of people who were declared eligible for citizenship were then kept on waiting lists and temporary status was granted and later revoked. They were either not registered, or registered under an administrative registration number in a parallel national database and this group of persons does not have access to a family booklet or a national number.

61 Articles 6-7, Executive Order No. 594 of 2010 Implementing the Nationality Law of 2010.

62 In accordance with Resolution No. 332 of 2021 issued by the Prime Minister's Office and adopted in execution of Law No. 24 of 2010 on the Issuance of the Libyan Nationality.

63 As per "The Legal Guide for Foreigners in Libya, as prepared by the International Center for Migration Policy Development and published on January 2020.



Parents and children in this category are unable to access documentation. They largely do not benefit from healthcare, education, social safety nets, and legal employment.

Whilst there is no clear domestic legislation regularizing the situation of persons who are stateless in Libya, Libyan nationality law grants children born in Libya the right to Libyan nationality in cases where their mother is Libyan and their father is of unknown nationality or with no nationality, or if both of the child's parents are unknown.<sup>64</sup> Further, children of unknown parentage in Libya are entitled to be registered within the Libyan civil registry and receive identity cards, passports, and family booklets.<sup>65</sup> However in general, persons who cannot prove their Libyan origin or nationality through legal documentation accepted by authorities will continue to have an uncertain legal status in Libya.

## 6.4 Refugees in Libya

Whilst Libya has not signed the UN Refugee Convention, it has signed the AOU Convention on Refugees. The Constitutional Declaration guarantees the right to asylum according to the law, and states that political refugees may not be extradited.<sup>66</sup> However, in practice, there is no national authority in Libya that undertakes refugee status determination nor delivers such registration. Moreover, the UNHCR can only register asylum seekers from nine nationalities without being able to offer formal refugee status and its associated international protection.<sup>67</sup> Libyan authorities do not recognize UNHCR registration documents. In other words, regardless of registration with UNHCR, persons in need of international protection do not enjoy the rights attached to asylum, including legal stay, non-penalisation or criminalisation for irregular entry, access to recognized documentation and basic rights, and protection from refoulement. No specific protective regulations are applicable to refugee children in Libya, whose rights are regulated by general foreigner's rights and regulations.

## 6.5 Residency and Registration of Non-Nationals

Law No. 6 of 1987 on Organizing the Entry, Residence and Exit of Foreigners in Libya together with Law No. 19 of 2010 on Combatting Illegal Immigration are the key laws on these issues and include rules on organizing the entry, residence and exit of foreigners in Libya, including children, in addition to the relevant executive regulations. In principle, foreigners are required to obtain permission to do so from the competent authorities in accordance with the law if they wish to enter, reside or exit Libya.

The General Directorate of Passports and Nationality will facilitate and expedite completion of entry and exit procedures for foreigners from the authorised entry points, such as airports, sea ports or land borders, and has competency for granting all visas and residency. Citizens of some Arab countries benefit from certain facilitations about entry and residency, such as visa free arrival or visas upon arrival. However, migrants from non-Arab States and Morocco, Sudan and Egypt must obtain a visa prior to arrival from the relevant Libyan Embassy or Consulate. Most foreign nationals in Libya need a visa prior to entering Libyan soil, even if they have had to flee their country to seek asylum, such as individuals from Niger, Nigeria, Mali, Ghana or Cameroon.

Any foreigner who enters and stays in Libya is required to present him/herself to the nearest passports authority to register within seven days of his/her arrival<sup>68</sup> and must submit his/her documents and documents for his/her family members that are granted entry visas as dependents.<sup>69</sup> Children under 16 years of age are authorized to stay as dependents on a foreign resident with regular residency.<sup>70</sup> Minor children listed on their parent's passport are exempted from visa and residency fees.

64 Article 3(c) of Law No. (24) of 2010 on Issuance of Libyan Nationality.

65 Article 8 of the Child Protection Act.

66 Article 10, Constitutional Declaration.

67 Link to [UNHCR - Libya](#), the nine nationalities: Syria, Sudan, South Sudan, Palestine, Eritrea, Somalia, Iraq, Ethiopia and Yemen.

68 Article 8, Law No. 6 of 1987.

69 Article 37 and Article 8/b of Law No. 6 of 1987 and ICMPD, 2020, The Legal Guide for Foreigners in Libya, [The Legal Guide to Foreigners in Libya](#).

70 Articles 32, 34 and 35, Decree No. 125 of 2005 on the Executive Regulations of Law No. 6 of 1987.



Libyan Law defines “illegal” migrants as follows: “anyone who enters the territory of Libya or resides therein without permission or authorization from the competent bodies, with the intent to settle therein or cross to another country.”<sup>71</sup> By law, “foreign illegal immigrants shall be penalized by detention with hard labour or by a fine not exceeding 1,000 LYD. In all cases, a foreigner convicted of any of the crimes contained in this law shall be expelled from the territory of the Great Jamahiriya (Libya) immediately upon execution of the sentence”. Foreign children, including unaccompanied children, are regularly detained in detention centres administrated by Libya’s Directorate for Combatting Illegal Migration (DCIM), a department of the Ministry of Interior.



## 7. PERSONAL STATUS AND FAMILY RIGHTS

The Libyan Constitutional Declaration highlights the role of the State in protecting the family in Libya. Article 5 notes that the family is the main pillar of society and is under the protection of the state. The State further “protects and encourages marriage, guarantees the protection of motherhood, childhood and people of old age, and takes care of children, youth and people with special needs.”<sup>72</sup> Where an issue is not sufficiently regulated by law, the rules of the most suitable form of Islamic jurisprudence apply.<sup>73</sup>

### 7.1 Marriage

The main law governing marriage and divorce is Law No. 10 of 1984 on Marriage and Divorce. Conditions can be included in the marriage contract by either party, including the payment of dower or mahr by the groom to the bride.<sup>74</sup> A man may marry up to four wives under the law.<sup>75</sup>

All marriage contracts in Libya must be recorded by a competent employee appointed by the Court in each municipality (maazoun) in order to document and register the marriage. No specific place is required for this procedure. The Law on Marriage and Divorce mentions that marriage between Libyan citizens and non-Libyans is in principle prohibited, except under specific circumstances enacted in the law. A special request with justification shall be submitted before the celebration of the marriage to the local municipality who transfers the request to the Ministry of Social Affairs. Request for marriage between Libyan citizens and non-Libyans from Arab State, are submitted to the office of Social Security of the municipality of residence.

The authentication of a marriage celebrated outside Libya for Libyan citizens is made through a request submitted to the Ministry of Social Affairs. Article 5 of the Law on Marriages and Divorces mentions that even if the marriage has taken place outside of Libyan territory, the spouse requires authorisation in order to have their marriage legally recognised in Libya.<sup>76</sup> If the marriage has already been celebrated outside Libya, a request should be submitted for authentication to Ministry of Social Affairs.

In the case of a Libyan man marrying a foreign woman, a proof of religion will be demanded (the certificate of conversion to Islam, or a certificate of Christianity from the church or the Embassy). In case Libyan women marry foreigners: a proof of Islamic religion is requested (certificate of Islam). The proof of undocumented marriage celebrated outside Libya is done by a certificate or a Court ruling. Article 5 of the Law on Marriage and Divorce stipulates that: “Marriage is proven by an authenticated certificate or by a court decision.”

71 Article 1, Law No. 19 of 2010.

72 Article 5, Libyan Constitutional Declaration.

73 Article 72, Law No. 10 of 1984.

74 Article 3, Law No. 10 of 1984.

75 Article 13, Law No. 10 of 1984. The article which imposed limits on polygamy was repealed by Law No. 14 of 2015.

76 See Articles 2,3, 4, Law No. 10 of 1984.





## 7.1.1 Age of Marriage, including Child Marriage

The age of marriage for both males and females is eighteen years old.<sup>77</sup> Both bride and groom must consent to the marriage<sup>78</sup> and guardians are prohibited from forcing persons into a marriage against their will. However, regardless of their age, females require a marriage guardian who is generally the father or another male relative. If a male relative is not available, the judge may act as a guardian.

The marriage guardian cannot unreasonably withhold consent to the marriage.<sup>79</sup> However, if they do withhold consent, the person wishing to get married may ask the court to authorize the marriage. If it considers the marriage appropriate, a judge of the court may authorize the marriage without the guardian's consent.<sup>80</sup>

## 7.2 Parental Responsibilities

In accordance with the Marriage Law No. 10 of 1984, the wife has various responsibilities towards her husband, which are set out in the law. These include (i) ensuring the husband's comfort and stability; (ii) supervision of the home and organization of its affairs; (iii) raising, protecting and nursing children of the marriage; (iv) and not harming the husband physically and psychologically.<sup>81</sup> In return, the wife is entitled to financial maintenance. The husband cannot cause his wife any physical or mental injury nor interfere with the private property of his wife.<sup>82</sup>

### 7.2.1 Guardianship of Children

Legal guardianship involves supervision of the affairs of the minor including control over a child's education, medical treatment, career guidance, consent to marriage and any other affairs concerning the minor's interests.<sup>83</sup> Guardianship is also considered a legal instrument that obliges the guardian to use their funds and resources in the interest of the child.<sup>84</sup> Legal guardianship formally ends once a child turns 18.

Law No. 10 of 1984 stipulates that in the event of marital life, guardianship of the children is a shared right between the parents.<sup>85</sup> In situations where the guardian is missing, ill or unable to care for the child, guardianship is decided according to their order of inheritance and kinship.<sup>86</sup> When both parties are considered equally eligible for guardianship, the court chooses the most suitable of them for guardianship. The court appoints a person who is fit for guardianship from among the relatives of the minor. Appointed guardianship applies in cases in which a guardian is appointed by the family or court. These are typically situations in which the father or paternal grandfather are not available or are not considered suitable to act as guardian. For example, an appointed guardian may be organized by a father who is living overseas, or through the court for a father who is in prison. Legal guardianship by the parent may be suspended for juveniles subject to reform measures for criminal matters, such as during placement in a juvenile reform institute.

In order to act as a guardian, a person must be of sound mind, trustworthy, of the same religion as the minor, capable of carrying out the guardianship and with no convictions on crimes requiring the deprivation of their guardianship.<sup>87</sup>

77 Article 6(a), Law No. 10 of 1984.

78 Article 9, Law No. 10 of 1984.

79 Article 8(b), Law No. 10 of 1984.

80 Articles 7-9 of Law No. 10 of 1984.

81 Article 18, Law No. 10 of 1984.

82 Article 17, No. 10 of 1984.

83 Article 33, Law No. 17 of 1992.

84 Article 31, Law No. 17 of 1992.

85 Article 62, Law No 10 of 1984.

86 Article 32, Law No. 17 of 1992.

87 Article 34, Personal Status Law.



These include felonies or misdemeanours against the child. If a person are is convicted in their capacity as a parent more than once, such as for the crime of neglecting family duties, the crime of misuse of means of reform and education or the crime of incitement to prostitution, the court shall have the power to intervene by transferring guardianship to any other guardian.<sup>88</sup> Further, “the court may, on its own initiative or upon the request of the investigation authority, temporarily entrust the minor to a trusted person or to a charitable institute or social institution until the issue of guardianship is decided upon. “In the event that issues of guardianship are not sufficiently regulated under the law, principles of *Sharia* law are applicable.<sup>89</sup>

## 7.2.2 Guardianship over Property

Whilst minors cannot typically exercise control over their money or assets before reaching the age of majority, it is permissible for the guardian, with the approval of the competent court, to authorize a mature young person aged 15 or above to have absolute or restricted permission to manage all, or some, of their money.<sup>90</sup> The authorized minor is considered fully competent to manage their affairs to the extent authorised and the guardian may revoke or restrict it whenever it appears to them that the interest of the minor requires it.

The young person who is authorized to manage their money must provide the competent court with an annual account for their actions.<sup>91</sup> The opinion of the guardian or trustee will also be taken into account. The court may limit or cancel the permission if it fears the property or assets may be mismanaged.<sup>92</sup> Guardians must also be appointed for persons who have intellectual or mental disabilities and who are consequently incapable of conducting their own affairs.<sup>93</sup> Trustees must also be appointed to persons sentenced to prison.<sup>94</sup>

## 7.2.3 Custody

The purpose of **custody**, as per the law, is to preserve the child, raise them, take care of their affairs and direct them from the age of birth until the end of their period of custody, which is different for males and females. In the event of separation or divorce the principle is that, custody is the right of the mother. The Law on Marriage and Divorce states that “if the mother leaves the marital home for a dispute with her husband, she is entitled to custody of her children unless the court deems otherwise in the interest of the child.”<sup>95</sup> Legal guardianship of children after divorce is therefore regulated by court ruling. There is no joint guardianship under the law.

If the parents separate, the law stipulates an order of priority for custody. The mother has first priority for custody but if this is not possible, custody passes to her mother (maternal grandmother). If this not possible, custody passes to the father of the children, then his mother (paternal grandmother).<sup>96</sup> After this, custody passes to the closest female relatives and then, if no relatives are available, to the closest male relatives. However, the court may change the order of custody for the benefit of the child with the exception of the mother, her mother, the father and his mother”.<sup>97</sup>

Custody by the mother must be exercised but in a manner which does not contract the right of the guardian, typically the father. A mother can lose the right of custody for various reasons including where she is mentally or physical unwell or otherwise unable to care for her children, or where a court rules that there is damage caused by the wife (material or moral).<sup>98</sup>

88 Article 38, Law No. 17 of 1992.

89 Article 82, Law No. 17 of 1992.

90 Article 7, Law No. 17 of 1992.

91 Article 7, Law No. 17 of 1992.

92 Law No. 17 of 1992.

93 Article 14, Law No. 17 of 1992.

94 Article 15, Law No. 17 of 1992.

95 Article 63(a) of Law No. 10 of 1984.

96 Article 67, Personal Status Law.

97 Article 62, Law No. 10 of 1984.

98 Article 39(a) of Law No. 10 of 1984.



She may also lose custody when she re-marries and her husband is not closely related to the children (mahram).<sup>99</sup> Custody ends for a male when he reaches puberty and for a female when she marries.<sup>100</sup>

A person who is ordered to hand over custody of a minor by court ruling and refuses to do so is punishable by law. Similarly persons who abduct a minor, or cause a minor to be abducted from the person with legal custody, is subject to criminal penalty.<sup>101</sup> If the custodian and the guardian of the child have a dispute over the child's visits, the competent judge shall issue an order determining the date, time and place of the visit, and the arrangements shall be expeditiously enforced by law. A child's maternity is automatically established upon delivery of the child, regardless of the mother's acknowledgement.<sup>102</sup>

### 7.3 Maintenance

A husband is obliged to provide **maintenance** to his wife (*nafaqa*) which includes housing, clothing, food and medical care for his wife and children. If the husband fails to provide maintenance, the wife can claim maintenance through a court application. If the husband fails to pay maintenance for compensation, custody, nursing or housing in breach of a court order they are punishable by detention.<sup>103</sup> Where a wife is widowed or divorced, not re-married and under 40 years of age she requires a guardian (*muharam*) who is typically the father, brother or brother in law. The muharam may ask the wife to live in his house provided that she is under 40 years old. If she refuses, she forfeits the right to maintenance. If a wife is widowed she is not permitted to remarry during the waiting period (*idda*) which varies but is approximately three months.<sup>104</sup> Widowed women are entitled to remain in the marital home during the waiting (*idda*) period. The court determines the amount of maintenance payable under *idda*.

If the husband initiates the divorce a compensatory payment, (*mutah*) may be made. The court will decide the amount of mutah taking account of the husband's financial situation. After divorce, the husband/father is responsible for the financial maintenance of his children. If the wife/mother has custody of the children, the father must cover the costs of housing for the mother and children and must pay maintenance for both the mother and children in order to cover their expenses. Maintenance is payable for daughters until they are married or able to earn sufficient income. The father must pay maintenance for his sons until they are able to earn their own income or until the completion of their education.<sup>105</sup>

### 7.4 Divorce

**Divorce** may take place through unilateral repudiation by the male (*talaq*), by judicial divorce or by redemptive divorce (*khu*).<sup>106</sup> Women may divorce husbands for various reasons including the husband's failure to pay maintenance, inability to consummate the marriage, prolonged absence without a valid reason, abandonment over four months or due to harm caused by the husband.<sup>107</sup>

Redemptive divorces are those in which the parties divorce by mutual consent in exchange for the payment of compensation by the spouses. However if the husband withholds consent unreasonably the judge may approve the divorce and order an appropriate amount of compensation to be paid.<sup>108</sup> Registration of divorce is compulsory and divorces must be registered within ten days of the issuance of the divorce by the court.<sup>109</sup>

99 Articles 65-66, Law No. 10 of 1984.

100 Article 62, Personal Status Law.

101 Article 398 bis (b), Penal Code.

102 Articles 56 and 59, Law No. 10 of 1984.

103 Article 398 bis (a), Penal Code.

104 Article 51-52, Law No. 10 of 1984.

105 Articles 51, 69-71, Law No. 10 of 1984.

106 Article 28, Law No. 10 of 1984.

107 Articles 39-43, Law No. 10 of 1984.

108 Articles 48-49, Law No. 10 of 1984.

109 Articles 29-30, Civil Status Law.



## 7.5 Visitation Rights

The Personal Status Law guarantees the right of a child separated from their parents or from one of their parents to maintain personal relationships and direct contact with their parents on a regular basis.<sup>110</sup> The law further notes that “if the custodian and the guardian of the child have a dispute over the child’s visit, the competent judge shall issue an order determining the date, time and place of the visit, and the matter shall be subject to expeditious enforcement by the force of law.”<sup>111</sup>

## 7.6 Travel with Children

Travel by the custodian to any place within Libya, whether temporary or by way of settling elsewhere, does not affect the right to custody unless the travel harms the interest of the child. The custodian must obtain the permission of the guardian of the child should they wish to travel outside of Libya. If the guardian refuses permission, the matter is referred to the competent court.<sup>112</sup>

## 7.7 Children of Unknown Parentage

Children of unknown parentage are given full names, and registered in a register prepared for that purpose at the relevant Civil Registry office. They are entitled to obtain identity cards, passports and family booklets.<sup>113</sup>

Whilst adoption is not recognized in the Personal Status Law, sponsorship and hosting arrangements (kafalah) are possible. Kafalah is a *Sharia* law concept similar to adoption, but without the severing of family ties, the transference of inheritance rights or the change of the child’s family name. It is similar to foster care of children. Kafalah is possible if (1) the child’s parents are unknown, (2) the father is unknown and the mother consents to the arrangement and (3) the child’s relatives are unknown.<sup>114</sup>

Persons who find children of unknown parentage may take custody of the child and act as their sponsor if the competent authority agrees. However the child will be removed from the sponsor if lineage of the child is proven in which case they will be handed over to the person with lineage, provided the child consents.<sup>115</sup> The child may also be removed from the sponsor if they neglect or abuse the child.<sup>116</sup> Sponsorship or kafalah of a child of unknown origin does not result in paternity over the child by the male sponsor.<sup>117</sup> However the sponsoring foster parent may bequeath a portion of his or her inheritance right to the foster child equivalent to the share for their own son or daughter in accordance with principles of *Sharia* law.<sup>118</sup>

## 7.8 Homeless Children

Children who are found to be homeless, may be handed over, “at the request of the Public Prosecution, to his or her parents, legal guardian, or a trusted person who shall undertake to raise and ensure the good conduct of the juvenile, or to a government-approved charity or institution”.<sup>119</sup> Homeless children are defined broadly under the law as those begging or living on the street, without parents or means of support and those of ‘bad conduct

110 Law No. 10, Personal Status Law.  
111 Article 68, Law No. 10 of 1984.  
112 Article 67, Law No. 10 of 1984.  
113 Article 8, Law No. 5 of 1997.  
114 Pursuant to Law No. 10 of 1984.  
115 Article 60(b), Law No. 10 of 1984.  
116 Article 60(a), Law No. 10 of 1984.  
117 Article 60(c), Law No. 10 of 1984.  
118 Article 60, Law No. 10 of 1984.  
119 Article 2, Law of 15 October 1955.



who have rebelled against their father or guardian.<sup>120</sup> If homeless children later return to the street they may be detained in reformatory, government-approved charity or government institution. Court orders in relation to the supervision, detention or treatment of homeless children are covered under the Code of Criminal Procedures for juvenile misdemeanours.<sup>121</sup>

## 7.9 Alternative Care Arrangements

The General Authority of the Social Solidarity Fund<sup>122</sup> undertakes the supervision and follow-up process for residential social care institutions for children whose conditions prevent them from living in their natural families. This includes orphans, people without social bonds and children in conflict with the law. Social care institutions include institutions for the care of the handicapped and the elderly, institutions for the care and guidance of juveniles, public nurseries and women's welfare institutions.<sup>123</sup> They provide care, accommodation, educational, social and psychological services and programs in order to ensure a decent life in the institution and prepare children for integration into society. They also provides aftercare services for children over 18 years old, until they have stability outside the institution. The Social Solidarity fund can also provide financial support to young adults getting married or setting up businesses. The Social Development Department monitors sponsorship, hosting and aftercare programs. The social care institutions can be categorized as follows:

**Residential nurseries:** are designated for children from birth to six years of age, whose social conditions prevent them from growing up within normal family life. Placement in such nurseries is restricted to children who have no supporter at the time of placement due to being an orphan, parental illness, parental delinquency, or the death of the mother with the father's inability to take care of the child or vice versa. The placement ends as soon as the child is able to return to their normal family life.

**Residential kindergartens:** are for children between the ages of four and six who have no guardian.

**Care homes for boys and girls:** are houses for children without a guardian who are aged between six and 18. They are available for children who are placed in residential kindergarten homes and have turned six, children who are deprived of family care because there is no legal guardian to take care of them, or because their family is not fit to provide a proper social upbringing because of the separation of the parents, or the mother's severe illness, or because she is in prison.<sup>124</sup>

**Juvenile centres:** are designated for juveniles under the age of 18 who have been sentenced to a penalty affecting their freedom, or for whom a decision has been issued by the authorities to place them in these homes. The aim of juvenile centres is to direct, reform, educate and train juveniles. In addition to public social welfare institutions, private social care institutions for juveniles have been established through the Ministry of Youth and Social Affairs.<sup>125</sup>

In addition to social care institutions, children without family support or of unknown parentage can be cared for under family sponsorship or hosting arrangements.<sup>126</sup> This system is intended to strengthen social support and compassion within the community for residents of social care shelters. The arrangements provide the opportunity for children to live together with a family for a limited time in accordance with the conditions set for the hosting arrangement. Sponsorship can be authorised for any family willing to accommodate a child needing care provided that they meet certain conditions and conditions.<sup>127</sup>

120 Article 1, Law of 15 October 1955.

121 Article 3, Law of 15 October 1955.

122 Law No. 20 of 1988.

123 Article 4, Law No. 20 of 1998.

124 Child care homes have been established according to Law No. 5 of 2011 issued by the National Transitional Council based on the Paris Principles regarding human rights bodies.

125 Article 1, Law No. 109 of 1972 regarding the Role of Educating and Guiding Juveniles.

126 General People's Committee Resolution No. 453.

127 General People's Committee Decision No. 454 of 1985. However the sponsorship arrangements are not available for children who are classified as delinquents.



Certificates of Excellence (Photo: NRC)

## 8. RIGHTS TO HEALTH, EDUCATION, SOCIAL WELFARE AND OTHER RIGHTS



### 8.1 Right to Health

The right to health and medical care for all citizens is guaranteed by the Constitutional Declaration<sup>128</sup> as well as the Health Law.<sup>129</sup> The Health Law notes the role of the Ministry of Health to “provide young people with all preventive and curative health services in order to achieve the physical, mental and psychological safety of the new generation.”<sup>130</sup>

Medical treatment and hospitals, sanatoriums, and treatment units of all kinds and names established by the State are a prescribed right for every citizen and everyone in it equally.<sup>131</sup>

Low income groups, widows and orphans without legal guardians are eligible for free government health insurance under the Health Insurance Benefit<sup>132</sup> whilst individuals who are unable to access basic health services in specific areas can receive lump sum benefits under the Health Assistance Benefit Scheme.<sup>133</sup> The Public Health Insurance Fund administers health insurance under a social insurance framework for all workers in Libya<sup>134</sup> whilst the Primary Healthcare Foundation is responsible for the provision of primary health care services in Libya.<sup>135</sup>

128 Article 5, Constitutional Declaration.

129 Article 1, Law No. 106 of 1973.

130 Article 3, Law No. 106 of 1973.

131 Article 50, Law No. 106 of 1973.

132 Art. 3, Law No.20 on Health Insurance (2010). See also UNICEF/UNHCR, Social Protection Systems for Children in Libya, November 2021, p 22, [Social Protection Systems for Children in Libya](#).

133 Social Protection Systems for Children in Libya, p 22.

134 UNICEF/UNDP, Roadmap for the Development of a National Social Security Policy in Libya, December 2021, p 12.

135 Roadmap for the Development of a National Social Security Policy in Libya, p 13.



## 8.1.1 Health Care Services and Entitlements for Children

The basic principle is that health care is free for Libyans and is paid for by privately non-Libyans. Financial fees are exempted for the treatment of certain categories of foreign nationals residing in Libya, such as members of international or diplomatic missions, workers under agreements and contracts guaranteeing free treatment, crew members of foreign aircraft during their presence in Libya, and in emergency and urgent situations that endanger the life of a non-resident foreign patient.<sup>136</sup> Cabinet Resolution No. 153 of 2015 set out the applicable prices for the treatment of foreigners in hospitals and health facilities.

Students in educational institutions have the right to obtain health care such as immunization against diseases, first aid and social care.<sup>137</sup>

## 8.1.2 Children with Disabilities

The State guarantees protection to persons with special needs.<sup>138</sup> Persons with certain types of intellectual disabilities, serious physical disabilities or chronic illness are eligible to receive financial support through the People with Disabilities Grant.<sup>139</sup> Subsidies on public transport are also available under the Universal Subsidy Programme.<sup>140</sup> Other government agencies providing services to persons with disabilities include the National Committee for Persons with Disabilities, the Supreme Committee for the Care of the Disabled and the General Authority for Families of Martyrs, Missing Persons and Amputees.<sup>141</sup>

## 8.2 Right to Education

The Libyan Constitutional Declaration guarantees the right to education.<sup>142</sup>

### 8.2.1 Basic Education and Compulsory School Enrolment

The Constitutional Declaration stipulates that “elementary education shall be compulsory for Libyan children of both sexes; elementary and primary education in the public schools shall be free”.<sup>143</sup> Law No. 18 of 2010 and its Executive By Law No. 779 of 2018 considers primary education (grades 1 to 5) and preparatory education (grades 6 to 9) as compulsory education. The law does not differentiate between boys/girls or citizens/ foreigners in education as prescribed in Law of 95 of 1975.

### 8.2.2 Documents Required for School Registration

Registration of students in school is based on a request submitted by the student's guardian in a form prepared by the Ministry of Education specifying the required documents, which are:

- A copy of the child's birth certificate.
- A copy of the mother's birth certificate.
- A copy of the father's birth certificate.
- The student's original and certified national number.
- The original and certified family status.

136 Article 2, Cabinet Resolution No. 153 of 2015.

137 Article 4, Executive Regulations No. 779 of 2018.

138 Article 5, Constitutional Declaration.

139 Decision No.41 on the Issuance of an Implementation Framework for Designated Benefits for Persons with disabilities in 1990; See also Social Protection Systems for Children in Libya, p 19.

140 Established in 1971 with the Price Regulation Fund through Law No.68. See also Social Protection Systems for Children in Libya, p 22.

141 Roadmap for the Development of a National Social Protection System in Libya, pp 12-13.

142 Article 5, Constitutional Declaration.

143 Article 30, Constitutional Declaration. See also Article 9 of Law No. 5 of 2006.



- The student's health card.
- A copy of the vaccination card.
- A statement of the place of residence.
- Four photos of the child in school uniform.<sup>144</sup>

After completing each school stage, the student obtains a certificate of completion of the basic education stage (primary and intermediate education) and a certificate of completion of the secondary education stage.<sup>145</sup>

Non-Libyan students with legal residency can register in Libyan schools. The process for foreign students is more complex than the process for Libyans.

For children with legal stay, the parents must first identify a school for their children. Once the school confirms the available space, the parents are required to apply to the Examination Office, Department for Non-Libyans (one office is available in each municipality) with the following documents:

- Birth certificate of the child; (hospital birth registration can be accepted).
- Copy of passport of parents.
- Entry stamp pass.
- Location of residency of the parents (a lease contract and an attestation from two witnesses attesting of the location of residence).
- Registration letter from police station.
- Medical examination and health certificate from the ICDC Centre for National Disease Control. To obtain this certificate, a passport is required.
- Transcript from the school in the place of origin. These must be original and stamped by the Ministry of Education and by the Ministry of Foreign Affairs from the country in which the school is located. These transcripts will be checked by the Center of Quality Assurance located in the central Ministry of Education. The Ministry assesses and recognises equivalence across the various education system in countries of origin.

Additional documents may be required. Sometimes parents must have a photo, copy of passport, a copy of the father or mother's work contract and LYD20. Often a vaccination card is required.<sup>146</sup>

### 8.3 Right to Social Welfare and Assistance

Social security is expressly guaranteed for all citizens under the Libyan Constitutional Declaration.<sup>147</sup> Article (1) of the Social Security Law stipulates that social security is a right guaranteed for all citizens, as well as providing protection for non-citizen residents.<sup>148</sup> Social security is defined in the law to include (1) social insurance, (2) social assistance and (3) social services as part of an overall package of social protection.<sup>149</sup> The social security system includes both financial assistance through the Social Insurance Law as well as a wide range of social welfare services<sup>150</sup> provided to children who are in need of care and support.

144 Article 10, Executive Regulations No. 779 of 2018.

145 Article 42(B), Executive Regulations No. 779 of 2018.

146 Extract from "NRC ICLA Practical Legal Manual on Foreigner's Rights", September 2022 (internal manual).

147 Article 5, Constitutional Declaration.

148 Law No. 13 of 1980.

149 Articles 2, 3 and 12 of Social Security Law of 1980.

150 Social care or social welfare services are defined as non-cash interventions including family support services, child protection services, and social work support to people with disabilities. See Roadmap for the Development of a National Social Protection System in Libya, December 2021, p 5.





**Social Assistance** consists of financial support, benefits or allowances financed by the government and usually provided to those living under a defined threshold of income or assets, or particularly vulnerable groups such as children and the elderly. **Social Insurance** refers to benefits financed by workers and employers through contributions to government health and social insurance schemes which provide protection against shocks during the course of life and events such as maternity, old-age and work-related injuries. **Social care or social welfare services** cover the range of services provided to vulnerable persons including family support services, child protection services, and social work support to people with disabilities.<sup>151</sup>

### 8.3.1 Social Assistance

The Libyan social protection system provides different forms of financial assistance to vulnerable families and children. The Basic Assistance Law sets out the categories of persons entitled to the basic pension including “the elderly, widowed women, orphans, and those for whom livelihood is restricted.”<sup>152</sup>

Financial assistance is provided to all Libyan children under 18 through the Wives and Children grant. The Grant also covers some categories of Libyan women, including married and unmarried Libyan women without an income and Libyan women married to non-Libyan men with children under 18 years old.<sup>153</sup>

The Social Solidarity Fund is established under the Ministry of Social Affairs, which also runs separate social assistance funds such as the Wife and Children’s Grant.<sup>154</sup> Social assistance payments<sup>155</sup> are also provided under the Social Assistance Law for Libyan and non-Libyan households who have difficulty accessing essential social services.<sup>156</sup> A series of one-off payments are also available under different schemes, including payments for pregnancy and birth.<sup>157</sup>

### 8.3.2 Social Insurance

The Social Insurance Law<sup>158</sup> guarantees the right of the child to social insurance<sup>159</sup> by providing certain insurance benefits in accordance with the entitlements in the law.<sup>160</sup> The Social Security Law No. 13 of 1980 lists the contributory benefits payable by workers in the private and public sectors as well as those who are self-employed.<sup>161</sup> The social insurance benefits provided through the system are old-age pensions, total/partial invalidity insurance/survivors insurance, family allowance as well as one-off and short-term benefits in cases of illness, injury birth or death for employees and self-employed workers. All citizens and residents of Libya must subscribe to the Health Insurance Fund.<sup>162</sup> The government covers the subscriptions to the Health Care Fund of vulnerable groups, namely widows, orphans, the poor, and those without any income.<sup>163</sup>

151 See Roadmap for the Development of a National Social Protection System in Libya, December 2021 for definitions and explanations.

152 Article 7, Basic Pension Law No. 16 of 1985.

153 Social Protection Systems for Children in Libya, p 17. Although non-Libyan children of Libyan mothers are not currently receiving the allowance. Roadmap for the Development of a National Social Protection System in Libya, p 38.

154 The Wives and Children’s Grant was established by Cabinet Decree No.9 in 1957 and later re-instated through Law No. 27 of 2013. See also Social Protection Systems for Children in Libya, p 18.

155 Social assistance is defined as non-contributory benefits financed by the government and usually provided to those living under a defined threshold of income or assets, or particularly vulnerable groups such as children and the elderly and can be in form of cash or in-kind (ILO 2016),; see Roadmap for the Development of a National Social Protection System in Libya, December 2021, p 5.

156 See also Social Protection Systems for Children in Libya, p 21.

157 Roadmap for the Development of a National Social Protection System in Libya, pp 42-44.

158 Law No. 53 of 1957.

159 Social Insurance is defined as contributory benefits financed by workers and employers providing protection against life-course shocks and events such as maternity, old-age and work-related injuries. See Roadmap for the Development of a National Social Protection System in Libya, p 6.

160 Law No. 53 of 1957.

161 Article 32, Law No. 13 of 1980 Social Security Law.

162 Article 1, Health Insurance Law.

163 Article 3, Health Insurance Law.



### 8.3.3 Social Care

**The Social Solidarity Fund (SSF)** provides health care services, education, housing and “the necessary social services”,<sup>164</sup> for eligible persons including those who have no guardian such as orphaned or abandoned children or those without any family support.<sup>165</sup> Housing benefits are provided through the Social Solidarity Fund<sup>166</sup> and through the Marriage Support Fund.<sup>167</sup>

The Social Solidarity Fund administers a number of child care centres for children without family care.<sup>168</sup> Other agencies providing social services and benefits to vulnerable persons in Libya include the Zakat Fund and the General Authority for Families of Martyrs, Missing Persons and Amputees.<sup>169</sup>

### 8.4 Right To Freedom of Expression and Association

According to the Constitutional Declaration **the family is the basic pillar of society** and is under the protection of the State.<sup>170</sup> The State protects and encourages marriages and ensures the protection of motherhood, childhood and older age and takes care of children, youth and people with specific needs.

The state also guarantees freedom of opinion, freedom of individual and collective expression, freedom of scientific research, freedom of communication, freedom of the press, media, printing and publishing, freedom of movement, freedom of assembly, demonstration, and peaceful sit-ins, in a manner that does not conflict with the law.<sup>171</sup>

### 8.5 Right to Social Development

The Constitutional Declaration notes that the State guarantees equal opportunities and works to provide a decent standard of living, the right to work, education, health care, and social security for every citizen.<sup>172</sup>

## 9. WORK RIGHTS AND CONDITIONS FOR CHILDREN



### 9.1 Working Age for Minors

**The working age in Libya is 18** and the Labour Law states, “it is not permissible for a person under the age of eighteen years to engage in any kind of work.”<sup>173</sup> However, there is an exception for persons aged 16 and over provided that the minor consents and the employment is in order to receive education or vocational training and their health, safety and moral standards are protected.<sup>174</sup>

164 Law No. 20, 1988.

165 Article 2 of Law No. 20, 1988.

166 Article 4(1) of Law No. 20, 1998 on the Social Solidarity Fund.

167 Article 2(1) of Law No. 5, 2019 on the Establishment of a Marriage Support Fund.

168 Roadmap for the Development of a National Social Protection System in Libya, p 9.

169 See Roadmap for the Development of a National Social Protection System in Libya, p 12.

170 Article 5, Constitutional Declaration.

171 Article 14, Constitutional Declaration.

172 Article 8, Constitutional Declaration.

173 Article 27, Labour Law No. 12 of 2010.

174 Article 10 of Law No. 5 of 2006.



## 9.2 Prohibited Work

The types of occupations in which juveniles are permitted to work, as well as the occupations in which it is prohibited for them to work are set out in the Labour Law.<sup>175</sup> It should be noted that it is illegal for employers to employ foreigners without legal residency or authorization to work.<sup>176</sup>

## 9.3 Special Conditions and Entitlements for Minors

The Ministry of Labor defines the procedures, conditions and restrictions for work by juveniles.<sup>177</sup> Juveniles are prohibited from working more than six hours per day, interspersed with one or more periods of rest and eating that are not less than an hour in total, so that the juvenile does not actually work for more than four continuous hours. Nor can juveniles be asked to work on weekly rest days, official holidays or during the night. The workplace employing juveniles must keep records with the names of the minors, their age, the date of their employment and the work assigned to them. A list showing the hours of work and periods of rest for juveniles must be placed in a prominent position in the workplace.<sup>178</sup> Articles 81-84 set out the conditions for vocational training in the workplace.

## 9.4 Employer Obligations to Minors

Law No.12 of 2010 and its implementing Regulation Circular<sup>179</sup> regulates the condition of employment of minors. It is forbidden by law to employ minors under 18, but there is an exception for minors who are 16 and older who can be employed if there are good health, safety, and ethical conditions in the work environment and for learning or training purposes.<sup>180</sup> The General People's Committee shall issue a circular if exceptions are considered and where suitable.<sup>181</sup> All entities employing minors (16-18 years old) are obliged to display all special working conditions for minors stated in this law and submit a list of their names, age, their duties at work their working hours and daily breaks to the relevant work authorities.<sup>182</sup>

# 10. PROTECTIONS AGAINST ABUSE OF CHILDREN



The Libyan Penal Code lists the general crimes punishable by law in Libya which may be relevant to the abuse of children including murder,<sup>183</sup> assault,<sup>184</sup> slight, gross or serious injury,<sup>185</sup> rape<sup>186</sup> and threats to cause harm.<sup>187</sup> The Penal Code also lists further specific crimes against children such as infanticide, neglect of children or abandonment of children. Minors who are victims of crimes can be kept under observation and care, subject to an order by the Public Prosecutor or courts, until the case against the perpetrator is decided.<sup>188</sup>

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- 175 Article 28, Labour Law.  
176 Article 3, Law No. 19 of 2010.  
177 Article 28, Labour Law.  
178 Article 29, Law No. 12 of 2010.  
179 Regulation Circular issued by the General People's Committee No.595 for the year 2010.  
180 Article 27, Law No. 12 of 2010.  
181 Article 28, Law No. 12 of 2010.  
182 Article 29, Law No. 12 of 2010.  
183 Articles 368, 372, 377, Penal Code.  
184 Article 378, Penal Code.  
185 Articles 379-380, Penal Code.  
186 Article 407, Penal Code.  
187 Article 430, Penal Code.  
188 Article 330, Penal Code.



## 10.1 Sexual Abuse

Libyan law stresses issues of sexual exploitation and sexual abuse of children in particular. Different penalties are applicable depending on the age of the victim. The strongest penalties are applicable for crimes committed against children 13 years old and below, with lower penalties for crimes committed on persons between the age of 14 and 18.<sup>189</sup> Lack of knowledge of the victim's age is irrelevant in sentencing when the offences are committed against minors under the age of 14.<sup>190</sup>

Sexual intercourse may only be practiced within the framework of laws regulating marriage and the legal age of marriage is 18 for both sexes. Sexual intercourse outside of marriage is punishable as adultery by up to five years imprisonment.<sup>191</sup> Sexual offences under the Penal Code include the following:

- **Sexual intercourse with another by force, threat or deception.** Persons who have sexual intercourse with minors under 14, even with the minors consent, are punishable by ten years imprisonment, which is reduced to five years imprisonment for sexual intercourse with juveniles between the age of 14 to 18.<sup>192</sup> The penalty varies from five to 15 years imprisonment if the perpetrator is a person responsible for the child's upbringing or supervision, or who has authority over them or who is a servant in the family.<sup>193</sup>
- **Indecent assault on another by force, threat or deception.** Assault of minors under the age of 14 is punishable by five years imprisonment, even with the consent of the minor. The penalty is reduced to a minimum of one year imprisonment for the assault of juveniles is over 14.<sup>194</sup> If the offender is a person between the ages of 14 to 18 they are liable for up to seven years imprisonment.<sup>195</sup>
- **Incitement of a person under the age of 18 to immorality,** to commit indecent acts or assisting, enabling or facilitating the minor in any way to commit a lewd act or committing such an act in front of the minor on a person of the same or opposite sex. The penalty is increased if the perpetrator is responsible for the upbringing of the child or is in a position of authority over the child.<sup>196</sup>
- **Abduction of an unmarried woman** or detention of her by force, threats, or deceit, with the intention of marrying her.<sup>197</sup> The penalties are increased for the abduction of minors, with different sentences depending on the age of the minor.
- **Abduction of a person, or detention of a person by force, threats, or deceit,** for committing lewd acts.<sup>198</sup>

## 10.2 Physical Abuse

The Penal Code punishes child abuse and there are various laws protecting children against abuse including the Child Protection Law.<sup>199</sup>

Anyone who maltreats a member of his or her family, a minor under the age of 14, or any other person under his or her authority or entrusted to him or her for education, instruction, care or training in a profession or art is punishable.<sup>200</sup>

189 See for example Articles 407, 408 of the Penal Code.

190 Article 422, Penal Code.

191 Article 407, Penal Code.

192 Article 407, Penal Code.

193 Article 407, Penal Code.

194 Article 408, Penal Code.

195 Article 408, Penal Code.

196 Article 409, Penal Code.

197 Article 411, Penal Code.

198 Article 413, Penal Code.

199 Law No. 5 of 1997.

200 Article 398, Penal Code.



Persons, including teachers, staff of child care or juvenile centres, or employers who use means of correction, education or vocational training against a person under his or her authority, supervision or protection resulting in physical or bodily illness are punishable.<sup>201</sup>

School disciplinary regulations criminalise beatings or physical punishments in schools. Social welfare institutions, education centres and juvenile directors carry out physical and psychological rehabilitation and social reintegration for children who are victims of any form of neglect, exploitation or abuse.

Abandonment of children, or concealing information about the true identity of a child for the purpose of abandonment, is a further offence under the Penal Code.<sup>202</sup> Killing an infant upon birth for the reason of preserving honour is a crime.<sup>203</sup> Abduction of a juvenile over 14 with the consent of the juvenile, or refusing to return the juvenile to the custody of the parent or guardian is punishable by detention.<sup>204</sup>

### 10.3 Neglect

The Penal Code penalizes various forms of neglect of children. Fathers who neglect their duty to provide maintenance on account of their paternal status, abandon the home or engage in conduct that is inconsistent with sound order and family morals are penalized under the law.<sup>205</sup> The penalties are increased if the father steals the property of his spouse or children or deprives them of the means to support or survive, except where he is legally separated through no fault of his own.

Abandonment of a minor by persons with the care and responsibility to care for them is an offence punishable by fine, detention and imprisonment.<sup>206</sup> Similarly, abandonment of a newborn after birth to preserve honor is also punishable.<sup>207</sup> Failure to provide assistance to a lost or abandoned minor under the age of ten is also a punishable offence.<sup>208</sup>

### 10.4 Other Offences

Other offences against children under the Penal Code include destruction, alteration or fabrication of personal information and concealment of the status of a legitimate or recognized natural child. Persons who conceal, give false information, destroy, alter or cause a false entry to be recorded in the Birth Registration Department are punishable by imprisonment.<sup>209</sup> Persons who places a legitimate or acknowledged natural child in a foundling hospital or charitable institution or conceals information about their identity commits a crime under the Penal Code.<sup>210</sup>

### 10.5 Trafficking of Children

There are various crimes against trafficking of persons under Libyan law. The Penal Code criminalises international trafficking of women as well as dealing and trafficking in slaves. Compelling a woman, including a juvenile woman, by force or threat to migrate to a location abroad with the knowledge that she will practice prostitution is punishable by imprisonment.<sup>211</sup>

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201 Article 397, Penal Code.

202 Article 405, Penal Code.

203 Article 373, Penal Code.

204 Articles 406, 413, Penal Code.

205 Article 396, Penal Code.

206 Article 387, Penal Code.

207 Article 389, Penal Code.

208 Article 388, Penal Code.

209 Article 404, Penal Code.

210 Article 405, Penal Code.

211 Article 418, Penal Code.



Separate penalties are applicable for persons who facilitate the trafficking.<sup>212</sup> Enslaving a person or human trafficking of persons for slavery or in conditions similar to slavery is punishable by imprisonment.<sup>213</sup> Kidnapping detention, confinement, or deprivation of any aspect of a person's personal freedom by force, threat, or deceit is punishable with up to five years imprisonment. The punishment is increased if the act is committed against a direct family member (ascendant, descendant or spouse), by a public servant transgressing the limits of their authority, and further increased if the perpetrator is trying to extort the victim by obtaining gain in exchange for release.<sup>214</sup>

Legislation has also been passed on trafficking in human beings and illegal immigrants. Imprisonment and fines of between 20-50,000 LYD penalize illegal immigrants who are involved in the transfer of illegal immigrants inside or outside of Libya resulting in a permanent disability or death.<sup>215</sup>

## 10.6 Recruitment of Children into Armed Conflict

The minimum age for military mobilization is 18 years old.<sup>216</sup>

## 10.7 Economic Exploitation of Children

Persons who take advantage of a person under the age of 21 and induce them to commit an act against their interest, but in the interest of the other party is subject to detention and fine.<sup>217</sup>

## 10.8 Mandatory Reporting of Child Abuse

Public offices and police stations require municipalities in the regions and the Child Affairs Department in the Ministry of Social Affairs and its branches to receive complaints related to ill-treatment of children, investigate and refer them to the judiciary. Public officials may be subject to fines or imprisonment for the failure to report an offence that they become aware of in the course of their duties in circumstances where they can initiate proceedings without waiting for a complaint from a third party.<sup>218</sup> The failure by a judicial officer to report an offence results in detention of the officer. Other laws require those with responsibility for child affairs such as doctors, teachers and social workers to report cases of child abuse to the competent authorities, whether to educational authorities or the police, the judiciary, or others.<sup>219</sup>

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212 Article 419, Penal Code.

213 Article 426, Penal Code.

214 Article 428, Penal Code.

215 Article 3, Law No. 19 of 2010 regarding Combatting Illegal Immigration.

216 Decree No. 86 of 2005 on the regulations, rules and provisions of the execution of Law No. 21 of 1991 on Mobilisation.

217 Article 463, Penal Code

218 Article 258, Penal Code

219 See for example Article 259 of the Penal Code for the failure by medical professionals to provide medical reports disclosing the commission of an offence.



Colouring activities (Photo: NRC)

## 11. JUVENILE JUSTICE



### 11.1 Age of Criminal Responsibility

The age of criminal responsibility is 14, although a judge may impose appropriate preventative measures on minors who commit crimes between the age of seven and 14.<sup>220</sup> A juvenile between the ages of 14 and 18 with sufficient conscience and understanding for the commission of the crime may be held criminally responsible but their penalty shall be reduced by two thirds.<sup>221</sup>

### 11.2 Special Principles for Dealing with Juvenile Offenders

In cases of a crime, juvenile courts shall impose the minimum penalty. Any period of time in a juvenile centre or other accommodation for juvenile offenders shall be continued until the juvenile shows signs of reformation and suitability for re-integration into society.<sup>222</sup> The supervising judge shall immediately order the release of the juvenile when he or she believes these conditions are met based on the opinion of the director of the special establishment and of the doctor responsible for the education of juveniles.<sup>223</sup> When the custodial sentence ends, the judge can order release of the juvenile under supervision.<sup>224</sup> Increased penalties for repeated offences or recidivism do not apply to juvenile offenders.<sup>225</sup> The Ministry of Youth and Social Affairs is responsible for managing and supervising programmes for educating and guiding juveniles.<sup>226</sup>

At the request of the Public Prosecutor lawyers may be appointed by the court to represent minors who lack capacity and are the victims of crimes.<sup>227</sup> In cases of felony or misdemeanor crimes involving victims who are minors, the Public Prosecutor, Indictment Chamber or court may order the victim into the care of a custodian who will keep the minor under observation and care for him or her, or to a charity approved by the Ministry of Justice, until the case is finalised.<sup>228</sup>

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220 Article 80, Penal Code  
 221 Article 81, Penal Code  
 222 Article 82, Penal Code  
 223 Article 82, Penal Code  
 224 Article 82, Penal Code  
 225 Article 98, Penal Code.  
 226 Article 1, Law No. 109 of 1972.  
 227 Article 225, Code of Criminal Procedure.  
 228 Article 330, Code of Criminal Procedure.



## 11.3 Juvenile Courts

Juvenile courts are formed in in the circuit of each district court.<sup>229</sup> They are responsible for conducting trials of juveniles offenders between the ages of 14 and 18 and for ordering preventive measures for juveniles.<sup>230</sup> Cases of homeless juveniles may also be prosecuted by the juvenile court. Felony cases<sup>231</sup> can be submitted directly by the Prosecutor or investigating judge to the juvenile court.<sup>232</sup> In case of multiple accused, where some are juveniles and others over the age of 18, the juvenile court will deal with the case of juveniles whilst the cases of the other accused will be transferred to the criminal court.<sup>233</sup>

Judges of the juvenile court supervise the implementation of the judgments issued against juveniles in their court circuit, as well as the orders issued to take preventive measures against them.<sup>234</sup>

## 11.4 Criminal Procedures for Juvenile Offenders

The Penal Code applies to all Libyan nationals and foreigners who commit a crime on Libyan territory.<sup>235</sup> Crimes may only be prosecuted if set out in the law and penalties can only be imposed as a result of a court judgement.<sup>236</sup> Criminal offences are punished according to the law in force at the time the crime was committed.<sup>237</sup>

Chapter 16 of the Code of Criminal Procedures sets out special procedures to be applied for juvenile offenders.

Parents or the legal guardians of the juvenile must be notified of every procedure in any case against a juvenile and may appeal any notifications, orders or verdict on behalf of the accused.<sup>238</sup> The investigating judge, the Public Prosecution, the Indictment Chamber, or the court shall appoint a lawyer to defend the juvenile in felony cases if the parents or guardian have not appointed a lawyer.<sup>239</sup>

Trials of juveniles are closed sessions which can be attended only by the parents of the juvenile, their relatives and legal guardians in addition to representatives of the Ministry of Justice and charities working with juvenile affairs.<sup>240</sup> The court can hear witnesses without the accused juvenile being present but cannot convict the accused without first providing him or her with a summary of the witness evidence.<sup>241</sup> Judgements must be pronounced in open sessions.<sup>242</sup> Juvenile courts have no jurisdiction over civil rights claims against juveniles.<sup>243</sup>

Before a ruling is made by the court on a felony and misdemeanor charge, the court must conduct an investigation into the minor's social status, the environment he or she grew up in, and the motivations behind the crime. Social workers, specialists, and physicians may be asked to support any such investigation.<sup>244</sup>

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229 Article 316, Code of Criminal Procedure.

230 Article 317, Code of Criminal Procedure.

231 Felonies are defined as crimes punishable by death, imprisonment or life imprisonment (Article 53 of Penal Code) whilst misdemeanours are crimes punishable by detention for more than a month or fines of more than LYD10(Article 54 of Penal Code). Infractions are offences punishable by less than a month detention or less than LYD10(Article 55 of Penal Code).

232 Article 317, Code of Criminal Procedure.

233 Article 317, Code of Criminal Procedure.

234 Article 328, Code of Criminal Procedure.

235 Article 4, Penal Code.

236 Article 1, Penal Code.

237 Article 2, Penal Code, although there are exceptions for offences punishing acts committed in a certain period.

238 Article 325, Code of Criminal Procedure. As a further note, if both parents have been convicted of a crime for less than a year in prison, there are options for deferment of their sentences so that they can continue to provide care for the minor. See Article 447, Code of Criminal Procedure.

239 Article 321, Code of Criminal Procedure.

240 Article 323, Code of Criminal Procedure.

241 Article 324, Code of Criminal Procedure.

242 Article 324, Code of Criminal Procedure.

243 Article 322, Code of Criminal Procedure.

244 Article 319, Code of Criminal Procedure. See also Article 28, Penal Code.





Penalties for juveniles between the ages of 14 and 18 who are criminally responsible are reduced by two thirds. If a juvenile, over the age of 14 commits a felony punishable by death or life imprisonment, the sentence will be reduced to imprisonment of a minimum period of five years and they will be detained in a special juvenile centre with programmes for discipline, education and deterrence from future criminal conduct.<sup>245</sup> Appeals against decisions of the juvenile court are made to the Court of First Instance and must be handled quickly.<sup>246</sup>

## 11.5 Reform and Care Measures for Juveniles

The Penal Code sets out various custodial and non-custodial measures that can be imposed upon juveniles in the course of sentencing. Custodial measures include; (1) detention in a place of confinement, such as a legal reformatory or juvenile centre or (2) treatment in a hospital for mental illness. Non-custodial measures include (1) release under supervision, (2) restriction of residence to one or more provinces or districts, (3) ban on visiting bars or places where alcohol is consumed or (4) deportation of foreigners.<sup>247</sup>

If a juvenile under 14 years commits a felony or intentional misdemeanor and the child is considered dangerous,<sup>248</sup> a judge may order that they be placed in a legal reformatory or placed under supervision.<sup>249</sup> Juveniles should only be placed in legal reformatories for the minimum period of time and should be released when there is evidence of reform or changed behavior, as certified through an opinion by the director of the reformatory as well as the doctor responsible for the education of juveniles.<sup>250</sup>

Orders for supervision can only be made if it is possible to place the juvenile under the supervision of the parents, the persons responsible for the education and care of the juvenile or in a social assistance institution.<sup>251</sup> The judge must first take account of the gravity of the act and the social circumstances of the juvenile's family.

The same preventative measures may be taken against juveniles over the age of 14 and under 18 who are not considered capable of understanding the crime they have committed and are thus not criminally responsible. If there are doubts about whether they are being reformed within the juvenile centre, they can be released under supervision.<sup>252</sup> Further, if the juvenile commits a crime within one year of being ordered under the supervision of the parent or guardian, a fine of LYD50 will be imposed on the responsible adult if the juvenile commits a felony offence and LYD20 if the juvenile commits a misdemeanor.<sup>253</sup> Even following the release of a juvenile there are circumstances in which they may be placed under supervision for a period of time.<sup>254</sup>

The judge may grant a judicial pardon to juveniles for crimes punishable by measures of restriction of freedom, including imprisonment or detention in a juvenile centre, for less than two years and fines of less than LYD50.<sup>255</sup> In deciding whether or not to issue a judicial pardon the judge must take account of the morals of the convicted person, their past conduct, their age, and the circumstances in which the crime was committed. There must be reason to believe that the juvenile won't commit future crimes. The judgement must explain the reasons for issuing a pardon.<sup>256</sup>

245 Article 81, Penal Code.

246 Article 327, Code of Criminal Procedure.

247 Article 144, Penal Code.

248 A person is considered a danger if they have committed criminal offences and are considered likely to commit further criminal offences. Article 135, Penal Code.

249 Article 140, Penal Code.

250 Article 82, Penal Code.

251 Article 181, Penal Code.

252 Article 151, Penal Code.

253 Article 151 bis (a), Penal Code.

254 Articles 152-153, Penal Code.

255 Article 118, Penal Code.

256 Article 113, Penal Code.



Juveniles who are accommodated in juveniles centres are subject to a programme of education and rehabilitation.<sup>257</sup> The centres are managed by the Ministry of Social Security. Following their placement in the centre, specialists conduct a social and psychological assessment. Juveniles are then included in special programmes for education, vocational training and development of their talents. They receive full health care and are permitted weekly family visits.

After their release from the juvenile centre measures to monitor the freedom of the juvenile may be imposed in certain circumstances, including where the judge considers it inappropriate to impose a good behavior bond.<sup>258</sup> Measures to monitor freedom may be imposed for a minimum of one year.<sup>259</sup>

## 11.6 Detention of Juveniles

Any deprivation of liberty must be based on organized legal procedures, whether in the form of implementing a judgment or a preventive measure issued by a judicial authority. If a situation calls for the provisional detention of a minor, they shall be placed in a rehabilitation school, place designated by the government for this purpose or recognised charity unless the Prosecutor or court decides to release them into the custody of their parent or guardian.<sup>260</sup>

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257 Article 3, Law No. 109 of 1972.

258 Article 152, Penal Code.

259 Article 153, Penal Code.

260 Article 317, Code of Criminal Procedure.



Returnees from Tawergha (Photo: NRC)



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