



Joint Submission to the UN Universal Periodic Review
22nd Session of the UPR Working Group

The State of Libya
Women's rights

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Joint Submission by the Civil Network for Transitional Justice,
and No Peace Without Justice

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A Introduction

1. The **Civil Network for Transitional Justice** (CNTJ) is a network of Libyan NGOs created in January 2014 to monitor the implementation of Law no. 29 on Transitional Justice. Since April 2014, the CNTJ developed contacts and working methods with a number of key actors involved in the Transitional Justice process in Libya, including GNC members and members of the Committee of the 60 (Committee for the drafting of the Constitution) in order to create productive and fruitful interactions and synergies between State institutions working on Transitional Justice and local NGOs, and develop and increase awareness on the need to enhance information-sharing and mutual confidence between civil society and public institution, also with the involvement of international organisations working in the field of Transitional Justice and Human Rights.

2. **No Peace Without Justice** (NPWJ) is an international non-profit organisation founded by Emma Bonino and born of a 1993 campaign of the Transnational Radical Party that works for the protection and promotion of human rights, democracy, the rule of law and international justice. NPWJ's International Criminal Justice program focuses both on international and national efforts to restore the rule of law and provide accountability and redress for the victims of crimes under international law, be they through the International Criminal Court, or through ad hoc Courts or Tribunals, national prosecutions or other accountability processes. The overall objective of the International Criminal Justice Program is to ensure that whatever solution is adopted, it is shaped and implemented so that it can contribute to the restoration of the rule of law, it is responsive to the needs of stakeholders and it adheres to the strictest human rights standards. NPWJ has been working on the Libyan transition since early 2011 and has been on the ground since early October. It has a permanent presence in Tripoli since March 2012 and has been working to create a network of Libyan actors to engage different sectors of Libyan society on transitional justice.

3. In this document, the Civil Network for Transitional Justice and No Peace Without Justice outline urgent concerns related to the ongoing women's rights violations in Libya and discuss in particular their engagement in civic and political activities (paragraph B) and the issue of sexual violence (paragraph C), while concluding making a number of recommendations to address the Libyan authorities (paragraph D).

B. Women's engagement in civic and political activities

Women in Libya still face challenges in ensuring their fair participation in public life. Laws and practices still discriminate against women and violate their rights as established in international human rights instruments.

4. Libya has an obligation to take measures to eliminate discrimination in political life and ensure women have the right to stand for office and participate in the formulation of government policy on equal terms with men.¹ Under Article 3, State Parties must take measures in all fields, including the political field, to guarantee the advancement of women "for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men." Moreover, under Article 3(3) of the Arab Charter, Libya is obliged to "take all the requisite measures to guarantee equal opportunities and effective equality between men and women in the enjoyment of all the rights set out in this Charter".

5. At the domestic level, article 21 of the General People's Congress' Green Charter of Human Rights – which remains binding in Libya – provides that men and women are equal in every human

¹ Article 7 of CEDAW.

aspect. Yet currently, there is no provision for gender parity, which is all the more concerning since gender parity was included in the 2012 electoral law, and there is no institutional mechanism tasked to promote de jure and de facto equality. Current laws still discriminate against women, deny women a remedy against abuse, discourage them from reporting sexual and domestic violence and, more troubling, effectively sanction violence against women.

6. As a result, and for other reasons, women in Libya are facing challenges in ensuring their fair participation in public, constitutional, and transitional justice processes. Nonetheless, women have played a critical role in the pre-revolution phase and can have a prominent role in Libya's post-conflict national reconciliation. For almost a year before Libya's 17 February Revolution, the female relatives of the victims of the Abu Salim prison massacre demonstrated in front of Benghazi's court every Saturday. These protesters demanded one thing: the truth about what had happened to their 1,270 relatives. On 15 February, two days before the start of the revolution, the female protesters escalated their protest by moving it from the court to the offices of interior security. Libyan women voted in high numbers in the General National Congress (GNC) elections in July 2012, with 66% of women surveyed having participated in the election². However, their voter participation rates were 22 percentage points lower than men's. In contrast to their relatively high levels of participation in the elections and their interest in matters of politics and government, very few women take part in any type of civic activity to express their views on social and political issues.

7. Following the revolution, many women and girls had restrictions imposed on their movement, due in part to growing concerns regarding the security of women and girls throughout the country. These restrictions are tightening as stories of violence against women circulate and uncertainty of centralised authority for the military and police continues to exist. As a result, women and girls are often confined to their homes. Indeed, women in Libya are restricted in their freedom of movement, with the majority unable to leave their house without permission. This has been exacerbated by post-revolution security concerns. Such restrictions force many women to remain bound to their homes and may be a factor that limits their civic engagement. Targeting woman activists like Ms Salwa Bugheiges and Ms Fariha Berkawi has further restricted the space of freedom for women and it made difficult to speak up publicly and defend women's legal rights. Alongside this, the capacity of national institutions and civil society to contribute to the protection of women's rights is limited.³

8. Regarding political participation of women, six seats out of 60 had been assigned to women in the Constitution Drafting Assembly elected in 2014. The 10 percent quota for women is very low and falls significantly short of the UN Beijing target of 30 percent. The same applies to the GNC where the only 16 percent of members are women. The method of assigning reserved seats for women is unwieldy. In the western electoral region, two constituencies were created where only female candidates can stand, whereas in the southern and eastern regions, women run alongside their male counterparts in multi-member districts, with one seat assigned to the best performing female candidate. This means that in the latter two regions, women with the highest number of votes may receive fewer votes than some of the men they will win against. It is not likely that women will be elected in other electoral districts, given that female candidates tend to perform poorly in plurality voting systems. In this way, Libyan law effectively pre-determines which parts of the country will be represented by men and which by women.⁴ Some GNC members have argued

² Rola Abdul-Latif, *Libya Status of Women Survey 2013*, A nationwide survey examining the civic, political and economic participation of Libyan women and exploring public attitudes toward women's roles, rights and domestic violence, September 2013, http://www.ifes.org/~media/Files/Publications/Survey/2013/Libya%20Status%20of%20Women%20Survey%20Report_final2.pdf

³ Technical assistance for Libya in the field of human rights, Report of the United Nations High Commissioner for Human Rights, 13 January 2014, <http://www.ohchr.org/en/countries/menaregion/pages/lyindex.aspx>.

⁴ http://www.democracy-reporting.org/files/el_assessment_final_-_cover_en_.pdf

that the quota is low since there is a need also to satisfy other demands, such as regional and ethnic representation. However, it must be noted that women and regional groups can be represented simultaneously. Regardless of their relative weight, the absolute number of only six women creates a small and easily marginalised bloc, even with a high supermajority requirement for decision making. The constituent assembly should consider rules of procedure that guarantee women's participation in decision-making forums, encourage coalition building and promote international standards against discrimination.

C. Violence against women

Sexual and gender-based violence continues to be widespread, ill-documented and under reported in Libya, where there are no referral mechanisms in place to support victims and their families, not even for crimes committed during the revolution. Because of social and cultural pressure, victims are isolated, neglected and most importantly not supported by public authorities and the law.

9. Preliminary findings from UN monitoring in Libya confirm that both women and men were subjected to rape and other forms of sexual violence during the conflict⁵. While women were abducted from their homes, from cars or from the streets and exposed to rape in places unknown to them, men were sodomised in prisons and in places of detention as a means to obtain intelligence. This serves as a reminder of the importance of including sexual violence in the list of possible human rights violations whenever war crimes are being investigated.

10. The possibility of the use of rape as a tool of war in Libya was first brought to international attention in March 2011 when Ms Iman al-Obeidi, a Libyan law student, burst into the Rixos Hotel in Tripoli and told the foreign journalists staying there that she had been held for two days and gang-raped by Gaddafi's soldiers. Security forces dragged her from the hotel, and the government tried to downplay the incident by claiming she was mentally ill, but the damage to the regime had been done. Rumours of a coordinated campaign of mass rape trickled out, but the sourcing was thin and contentious. Central to the controversy was the work of Seham Sergewa, a Libyan psychologist who claimed to have sent out 70,000 questionnaires and received 60,000 responses, despite the lack of a functional postal system. Among these responses were 259 reports of rape; when asked about the possibility of following up with these individuals, however, Sergewa claimed to have lost contact with them. Further accounts by rebel fighters of finding Viagra and condoms, ostensibly used to help soldiers to rape, in burned-out loyalist vehicles went unsubstantiated as well. While evidence of systematic rape remains scarce, it is clear that there were numerous incidents of rape and it is equally clear that the threat of rape was used to instil fear in entire communities.

11. In Libya, rape is considered to be one of the most serious crimes, affecting not just the victim, but also the family and the community, and can trigger retaliation and honour-based violence. It is difficult to know the exact number of rape cases given the social stigma associated with the crime in Libya's conservative society. Women suffered individually from crimes like rape during the revolution but these crimes remain an open wound for Libyan society that, if not dealt with properly, will obstruct efforts at reconciliation.

12. The Commission of Inquiry on Libya⁶ interviewed more than 20 male and female victims of sexual violence. The Commission met with another 30 witnesses including doctors, attorneys, and individuals with direct contact with victims or perpetrators. The Commission interviewed five

⁵ Margot Wallström, Historic Transition in Libya Must Not Forget the Survivors of Sexual Violence, March 2012, http://www.huffingtonpost.com/margot-wallstrom/historic-transition-in-li_b_1373290.html

⁶ <http://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session19/a.hrc.19.68.pdf>

perpetrators accused of committing rape and also reviewed relevant reports of NGOs and other material. The Commission has received limited evidence of rapes and sexual violence committed by the *thumar* (i.e. revolutionary forces). The Commission interviewed two victims, known to be Gaddafi loyalists, who had been sexually tortured by *thumar* in detention centres. One pattern of sexual violence identified was that of women who were beaten and raped by armed men in their homes, or abducted and beaten and raped elsewhere, sometimes for days. Some victims were targeted because of their allegiance to the *thumar* and others were assaulted for no known reason. Of those targeted, rape appeared to be used as a means to punish, terrorise and send a message to those who supported the revolution. A second pattern was of sexual violence and torture of males and females in detention centres who were *thumar* or supportive of the *thumar*, to extract information, humiliate and punish. Victims were arrested and normally taken to a location where they were interrogated and tortured.

13. The prevailing culture of silence, the lack of reliable statistics, the evident use of torture to extract confessions and the political sensitivity of the issue combine to make sexual and gender-based violence the most difficult one. The Commission found that sexual violence occurred in Libya and played a significant role in provoking fear in various communities. The Commission established that sexual torture was used as a means to extract information from and to humiliate detainees.

14. In May 2013, the Minister of Justice submitted a draft law on the care of women victims of rape and violence to the General National Congress, as previous legislation did not ensure adequate protection in this regard. This is a positive step towards providing reparations and physical and psychological health care for survivors, establishing shelters, a legal instrument to grant children born of rape legal status, and legal aid for survivors to seek accountability. The law would also apply to male victims. On Wednesday 19 February 2014, the Libyan Minister of Justice, Mr Salah El Marghany, adopted a text protecting victims of sexual violence by ministerial decree⁷ aimed at establishing transitional justice mechanisms in cases of sexual and gender-based violence (SGBV). The Decree seeks to redress the situation of victims of rape and sexual violence in the spirit of transitional justice which “requires removal of all injustice and redressing the consequences of violation” and foresees There are also legislative and other proposals for compensation and rehabilitation for victims of SGBV. The decree has not been passed into law and its implementation therefore remains stalled. While the decree focuses mostly on pecuniary reparations and benefits for victims, it does establish that victims are entitled to assistance in pursuing the perpetrators of the crimes and putting them on trial.⁸ This provision represents a fundamental element of the transitional justice process developed in Libya and needs to be pursued with haste by the Libyan authorities.

15. The only Libyan law addressing domestic violence is Law No. 10 of 1984, which defines sexual violence under crimes against freedom, honour and morality. This does not appropriately reflect the nature of the crime: SGBV should be considered as a crime against the individual rather than against a specific norm or value. The Libyan authorities must ensure that the relevant national legislation is consistent with international conventions signed by Libya, such as the Convention on the Elimination of all Forms of Discrimination Against Women and the African Charter on Human and People’s Rights on the Rights of Women in Africa.

16. Consensual sexual relations outside of wedlock are criminalised⁹), which does not comply with international treaties such as the International Covenant on Civil and Political Rights in which the right to private life is guaranteed. Current provisions of the Penal Code permit a reduction in

⁷<http://www.fidh.org/en/north-africa-middle-east/libya/14720-libya-adopts-an-unprecedented-decree-protecting-victims-of-sexual-violence>

⁸ Article 3.

⁹ Articles 407(4) and 408(4) of the Penal Code.

sentence for a man who kills a wife, daughter, mother or sister whom he suspects to be engaged in extramarital sexual relations. The Libyan Arab Jamahiriya's *zina* laws, which criminalised adultery and intercourse outside marriage, could lead to the detention of women and girls in social rehabilitation facilities. These laws, codified in the Penal Code, discourage rape victims from seeking justice by presenting them with the risk of facing prosecution themselves. As such, there is a lack of adequate laws and services that leaves women who are victims of violence without effective remedies and without the means of filing complaints.

17. Many women and girls detained in “social rehabilitation” facilities for suspected transgressions of moral codes had committed no crime, or had already served a sentence. Some are there for no other reason than that they were raped and are now ostracised for staining their family’s “honour”. The Human Rights, Transitional Justice and Rule of Law Division of UNSMIL has paid particular attention to the situation of female detainees and knew of approximately 80 female inmates held in five prisons or detention facilities as of November 2013. The majority were detained without due process in connection with the conflict. Female detainees have raised a number of concerns relating to the lack of female guards, the access of male guards to their cells and the lack of specialized health care. Several female detainees stated that they had been sexually harassed during detention in their cells or during interrogation.

18. The country faces a number of challenges, but most important in terms of addressing sexual violence is to urgently provide appropriate services for survivors. This includes medical, psychosocial and legal support that, critically, respect survivors' confidentiality and privacy. The National Transitional Council has set up a reporting system through the Ministry of Women and Social Affairs, with the purpose of affording rape victims the opportunity to come forward. However, with the heavy stigma attached to SGBV in Libya, it remains to be seen whether women will report crimes committed against them. Additionally, without a way to guarantee the physical safety of women who report rape, they risk being killed by family members seeking to return “honour” to the family and the community. It is also imperative that conflict-related sexual violence is taken into account in the context of security sector reform, including in the training of Libya's national security forces. It is now crucial that Libya's own role in the country's historic transition must give hope and translate into assistance also for survivors of sexual and gender-based violence.

D. Recommendations

In light of the above, the Civil Network for Transitional Justice and No Peace Without Justice recommend to the Libyan authorities to:

19. Libya should withdraw its reservations to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to guarantee effective protection of women's human rights as they are recognised internationally and regionally, including in CEDAW and the Maputo Protocol on the Rights of Women in Africa;

20. Guarantee full equality for women in the new constitution, consistent with Libya's international and regional obligations under CEDAW and the Maputo Protocol. The Constitution should ensure that women are protected from all forms of public or domestic violence and that this protection is enforceable by law through the courts;

21. Develop laws criminalising domestic violence that give adequate protection to women;

22. Repeal or amend current laws that discriminate against women, including article 375 of the Libyan Penal Code. In particular, amend provisions that classify sexual violence as a crime against

“honour” and repeal provisions that allow for reduced sentences for perpetrators of “honour” crimes;

23. Pass strong anti-discrimination laws;

24. Ensure adequate financial, administrative and human resources for a comprehensive protection and service response, to strengthen national institutions and for the implementation of comprehensive legislation on reparations for victims of conflict-related sexual and gender-based violence;

25. Ensure, inter alia, women’s right to equal access to justice. The Libyan parliament should assume its responsibility towards the victims of SGBV by adopting the Proposed Decree to Redress the Situation of Victims of Rape and Violence as a law, in particular with regards to its article 3 to ensure that legislative and administrative measures are elaborated to facilitate the prosecution of SGBV cases, starting from the violence committed during the revolution;

26. Ensure the effective implementation of the provisions of United Nations General Assembly Resolution A/RES/67/146 by adopting and enforcing laws and regulations banning female genital mutilation, including criminal sanctions for authors and accomplices, prevention measures and support for victims, including those within immigrant communities, in conformity with the provisions of the UNGA Resolution.