Libyan Women Married to Foreign Nationals: Oppression and Stateless Children

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# Table of Contents

**Introduction** 4

1. Is it legal for Libyan women to marry foreign nationals? 7
   1.1 Legal framework of Libyan women marriage to foreign nationals 7
   1.2 Is it protection of women or arbitrary restriction of their right to choose their husbands? 10

2. Legal consequences of female Libyans marrying to foreign nationals 13
   2.1 Libyan women married to foreign nationals may lose their nationality, fail to pass it on to husbands and/or children 13
   2.2 Rights to education, health, ownership 15
   2.3 Restrictions on obtaining documents 16

3. Social consequences of marriage of female Libyans to foreign nationals 17
   3.1 Pejorative attitude and tribe influence 17
   3.2 Libyan wives married to foreign nationals recount their stories 19

4. Position de la Constitution libyenne, et du droit international 21
   4.1 Constitutional position on marriage to foreign nationals 21
      4.1.1 The 1951 Constitution 21
      4.1.2 The Constitutional Declaration of 2011 22
      4.1.3 Drafts of the constitution of 2013 22
      4.1.4 The Draft Consensus Libyan Constitution Issued by the Elected Committee of 2017 24
   4.2 Position of International Law 26
      a. Nationality is a right and no one shall ever be stateless 26
      b. Men and women should be equal in the rights to acquire and give citizenship to their children 28
         c. Depriving the mother’s children of their nationality deprives them of the right to enjoy other basic rights 29

**Recommendations** 31
Introduction

In recent years, there has been a significant increase in the marriage of Libyan women to foreign nationals, especially with the rising number of migrants and asylum seekers crossing the Libyan territory.

Almost a year ago, being aware of the rising phenomenon, the Supreme Judicial Council of Libya instructed the legislative and executive authorities to intervene by developing restrictive legislation of Libyan women marriage to foreigners. Justifying their move, the Council considered this marriage dangerous to the demographic composition of the Libyan society and a threat to the national security of the Libyan state.

Even before this move, Libyan women had never been given the right to choose their husbands under several legal and social restrictions. Over the years, the marriage of Libyan women to foreigners has been one of the most sensitive and complex issues in Libya, attracting a divergence of views within the state and the community alike. The structure of the tribal community has been reinforced as a result, citing cultural and social reasons for the sensitivity towards this kind of marriage.

On the legal level, for women and men wishing to be married to a non-Libyan and have a marriage contract, they have to obtain the approval of a committee from the Ministry of Social Affairs if the husband is Arab. However, for Libyans married to non-Arab foreign nationals, they have to obtain the permission of the External Security Service.
Unlike male Libyans married to non-Libyan wives, female Libyans cannot pass on their nationality to their children, except in exceptional circumstances and after undergoing complex procedures that often result in children becoming stateless if their mothers fail to pass on Libyan nationality to them.

These children also do not enjoy free education or healthcare like children born to Libyan fathers. Furthermore, their right to citizenship is denied, not to mention their political rights, thus contradicting international obligations under the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Civil and Political Rights.

**On the social level**, the law has encouraged the Libyan society’s stigmatizing view of women married to foreign nationals. They are called names, abused, sometimes assaulted, and their families are forced to leave the place where they live.

In addition, Libyan women married to foreigners find it very difficult to obtain papers and identity documents, because the official Libyan authorities refuse to deal with any Libyan woman who marries a foreigner, whether this has to do with the women, their husbands or even their children.

In this report, we examine the main challenges and obstacles facing Libyan women married to foreigners. We also investigate the legal obstacles and provide testimonies of a number of Libyan women who have been persecuted, discriminated against, abused and humiliated by their families and communities because of their decisions to marry to a foreign national.
Through this report, we aim to draw the attention of international bodies to this issue, especially the United Nations, in order for them to work with the Libyan government to amend the laws and to improve the community’s view of women married to foreign nationals. This is possible by conducting awareness and training programs to support Libyan women married to foreign nationals, address their societal and law-related concerns.

Also, by releasing this report, we aim to provide a useful contribution to civil society organizations in Libya as well as to academic and human rights institutions, hoping to understand and convey the heart of the problem and contribute to its solution legally and socially in accordance with Libya’s obligations under international human rights law.
1. Is it legal for Libyan women to marry foreign nationals?

It may be surprising that women’s right to choose their partners is discussed in the Libyan laws and customs. However, this is the reality according to the Libyan laws dictated by considerations that Libyan official institutions consider necessary for the protection of women in Libya. This is explained below.

1.1 Legal framework of Libyan women marriage to foreign nationals

The marriage of Libyan women to foreigners was regulated by Law No. 15 of 1984 on the rules of marriage between Libyans and non-Libyans, where the law distinguished between two types of foreigners:

**Non-Arab foreigners:** According to Article 2 of this law, any Libyan who wishes to marry a person who does not have the Libyan nationality or the nationality of any Arab country (known as a non-Arab foreigner) **must obtain a security approval from the External Security Service.** Before proceeding with any other action, the applicant must submit an application stating the reasons and circumstances for his/her application. It is also stipulated that the applicant must not be married or divorced.

**Arab foreigners:** As provided for in Article 3 of the law, any Libyan wishing to marry a person who does not have a Libyan nationality but has the nationality of an Arab State shall obtain permission from the Ministry of Social Affairs after submitting a request, usually accompanied by a residence certificate, a proof of religion, and the consent of the embassy of the person wishing to be married to the Libyan national.
In both cases, all documents are referred to a committee formed within the Ministry of Social Affairs, which is authorized to give or deny approvals. According to Article 4 of the law, consent will not be granted unless social research is conducted and there is a strong justification for the application of marriage to non-Libyans.

As noted in the text of the law, marriage to foreigners does not exclude Libyans from the need to obtain the approval of the Ministry of Social Affairs Committee. However, the difference lies in the implications of the distinction between children born to male or female Libyans.

Children born to a male Libyan enjoy full nationality and citizenship rights as if they were born to a Libyan mother. They enjoy civil, political, economic and social rights equal to those born to Libyan parents. However, children born to a Libyan mother married to a foreigner do not enjoy these rights.

Commenting on the text of the article on marriage of a Libyan to a foreign national, Ayad al-Shuhaidi, Director of the Ministry of Social Affairs in Misrata, said: “The ministry faces several problems with Libyan citizens wishing to marry foreigners. Islamic law, which is the basis of most of Libya’s legislation, requires that a husband should have manners and faith in order for him to marry a woman, regardless of their nationality.”

Practically speaking, it is possible for the committee to take arbitrary and unjustified actions, given the powers invested in it to grant marriage approvals with strict controls. The reason for this possible arbitrariness stems from the lack of a regulatory body; not to mention that the decisions of the committee cannot be appealed to a higher administrative body. Only before administrative courts that such decisions can be challenged.
However, such process is not only costly, but it also takes much time and effort, and with little chance for success.

According to Article 5 of Law No. 15 of 1984, marriage contracts that are carried out without the approval of the Ministry of Social Affairs, including those outside Libya, may not be documented, substantiated or recorded until after authorization has been issued by the Ministry. It is also neither permissible to make the marriage contracts public which violates the provisions of the said law, nor do these contracts have any legal effects before the state’s employees or other public bodies of the state.

**Article (8) of the same law stipulates that:**

“It is not permissible to invoke marriage contracts before the public bodies that are in violation of the provisions of this law, and these contracts do not entail any legal effects…”

Thus, any marriage contract between a Libyan and a foreigner will not be documented as long as the authorization has not been granted by the Committee of the Ministry of Social Affairs. This means that such a contract, as long as it is unregistered with a civil registry, will not be recognized by government agencies in Libya, either with regard to the effects of the marriage contract or even in case of annulment and divorce.

This means, inter alia, that the children born within such marriage will not be recognized and will be treated as foreigners and will not be granted a Libyan nationality or a Libyan travel document. Hence, if a Libyan mother decides, for instance, to travel to Tunisia with her children, she can go, but her children will not be able to do so without a visa.
Our team tried to obtain statistics on the number of Libyan women married to foreigners from the Ministry of Social Affairs in Libya, however the request was denied by the Ministry, stating that “this is an internal affair and ... cannot be revealed so that it does not become a threat to the Libyan state.”

1.2 Is it protection of women or arbitrary restriction of their right to choose their husbands?

The director of the Ministry of Social Affairs in Misrata, Ayad al-Shuhaidi, justified the restrictions imposed on women’s freedom to choose their marital partners by the need to protect Libyan women and preserve the Libyan social fabric. Al-Shuhaidi said that some of the men who came to marry Libyan women were illiterate and entered Libya illegally, and other are wanted in their own countries.

Al-Shuhaidi pointed out that the restrictions stipulated in Law No. 15 of 1984 are intended to learn about the person who wishes to marry the Libyan national because there are cases where a marriage was concluded within a week of the partner’s entry into Libya.

There are many Libyan women who married foreigners without the approval of the Ministry of Social Affairs, and despite their parents’ consent, it turned out that their husbands were criminals prosecuted in their own country, impersonated non-existing people and used fake documents, al-Shuhaidi added.

The director of the Misrata branch for the Ministry of Social Affairs cited an incident in which an Egyptian man who proposed to a girl from Misrata using papers and documents that appeared official. When the Ministry addressed his country’s embassy in Libya, it turned out that the name he used belonged to a deceased person.
However, Wissam Sulaiman al-Saghir, a Libyan lawyer who works on matters of marriage and divorce, considered that the procedures provided for in the law are unacceptable, since there is no clear legal basis for restricting women’s freedom to marry foreigners, especially since many Libyan women married foreigners without the approval of the Ministry of Social Affairs, and their marriages, according to al-Saghir, have been successful.

A lawyer met by the Euro-Med said that he was a lawyer of a girl who was physically assaulted during the events in Libya on February 17, 2011, during the overthrow of former president Muammar Gaddafi. This physical assault limited her chances of a reunion, given that social traditions look down to women subjected to physical assault. A Syrian young man proposed for her but did not receive the approval of the Libyan Ministry of Social Affairs. The marriage was performed without the permission of the authorities in Libya, and enduring the legal restrictions imposed on them while living in Libya. Given the community’s ill-treatment of the two, they had to leave Libya to the Netherlands, where they are now leading a successful life with two children of their own.

“The idea of protecting Libyan women by restricting marriages to foreigners is inaccurate,” al-Saghir said, adding that “many Libyans had married Libyans, were assaulted and beaten, or had been abandoned by their husbands while fleeing the country, and the State did nothing to prevent that.”

It is noteworthy that the ratio of males to females in Libya is about 1 to 3, according to the latest statistics issued by the Libyan Interior Ministry. Given this ratio, lawyers and civil society activists interviewed by Euro-Med’s team say that the Libyan authorities and the Supreme Judicial Council should instead ease restrictions on marriage while protecting the rights of women. They also cited these restrictions as some of the reasons driving Libyan women to stay single, where about 35% of Libyan women are unmarried.
However, the Fatwa House in Libya, emphasized the need to put harsh restrictions on the marriage of Libyans to foreigners, according to a statement made by the Grand Mufti of Libya Sadiq GharANI. The Fatwa House also made recommendations to the official authorities in the State to prevent marriage to Shiites and to preserve the rights of the Libyans as well as the “Sunni Islamic identity”.

Some clerics close to the Fatwa House said they had received complaints from women who had married Arab and non-Arab foreigners and stayed with them for a short time before their husbands fled and returned to their countries or migrated to other countries, leaving behind their wives and children suffering the scourge of injustice and homelessness.
2. Legal consequences of female Libyans marrying to foreign nationals

2.1 Libyan women married to foreign nationals may lose their nationality, fail to pass it on to husbands and/or children

One of the most important legal effects of mixed marriages in Libya is the issue of losing or obtaining nationality. If a Libyan woman married a foreign national and acquired foreign nationality, she loses her Libyan nationality. Article 5 of the Libyan Nationality Law No. 24 of 2010 states that: “A Libyan acquiring a foreign nationality may lose his/her Libyan nationality unless authorized by the Ministry of the Interior.”

For Libyan women wishing to acquire the nationality of their foreign husband by choice, or if the law of their husbands’ state grants them nationality, they immediately lose their Libyan nationality, pursuant to the provisions of the previous article.

**With regard to the Nationality Law, citizenship is granted only to three categories:**
- Individuals born in Libya to a Libyan father; or
- Individuals born abroad to a Libyan father; or
- Individuals born in Libya to a Libyan mother and a father whose nationality is unknown, or is stateless, or whose parents are unknown.

**As it is clear, this law has deprived the foreign husband of a Libyan woman and her children of the Libyan nationality, as they are originally considered foreigners.**
Although Article 11 of the law allows the Libyan Passport and Nationality Department in the Ministry of Interior to grant citizenship to children of Libyan women married to foreign nationals, this article is ineffective in practice for two reasons:

- This article does not have a legal force, leaving the competent authorities entirely in charge. Meanwhile, children of Libyan males married to a foreign national are considered Libyans and enjoy Libyan nationality by force of law, which is clearly discriminatory.

- The same article restricted the granting of nationality to Libyan children as stipulated in the executive regulations of the law. According to the provisions of Articles 6 and 7 of these regulations, there are many restrictions relating to the acquisition of nationality in this case. The nationality of the Libyan children born to female Libyans married to foreigners may only be granted after they become adults, with the exception where the father is dead or missing. If these children become adults, they may be granted the Libyan nationality after filling an application, with their parents’ consent, in addition to the consent of the competent authority in the Social Affairs Ministry to the marriage of the parents. It also states that it is prohibited to grant Libyan citizenship to the children of Libyan females married to Palestinian citizens.
2.2 Rights to education, health, ownership

Children born to Libyan women married to foreign nationals are not entitled to free education and healthcare because they are considered non-Libyans, and thus are denied the full right to citizenship, civil as well as political rights.

Moreover, the Libyan legislation does not grant foreign nationals married to Libyan women the right to own real estate or buildings except for investment, provided that his investment be shared with Libyan capital or stakeholders, however they can still own movables such as cars.

In addition to the fact that a foreign man married to a Libyan woman cannot own a property in Libya, if his wife dies, inheritance becomes problematic in terms of the possibility of transferring property to him, since it is not permissible for him to own property in Libya in the first place. Meanwhile, ownership of the property can be transferred to the children resulting from such marriage upon the mother’s death.

Although the right to education and health is guaranteed under international conventions and cannot be discriminated, the Ministry of Education of the Government of National Reconciliation in Libya issued a decree establishing and imposing a financial fee on every foreign individual wishing to attend public schools, when Libyans can study for free.

A. M., 45, is a Libyan woman from the Libyan city of Sabha and is married to a Sudanese husband. She explained that she had been subjected to a discriminatory situation after her daughter obtained a high secondary school diploma. It was not possible for her to enroll in college at the Faculty of Human Medicine in Libya,
since this specialization is limited to Libyans only. Even though some universities do allow for non-Libyans to enrol in the program, they still ask for large and often unaffordable sums of money to be paid.

### 2.3 Restrictions on obtaining documents

Another problem facing Libyan women married to foreign nationals is the difficulty to obtain personal and identity documents, especially if the competent authority does not authorize or delay the marriage. The competent authorities may also delay or disapprove obtaining documents in cases where marriage occurs outside Libya, especially when there are procedures to be performed inside Libya.

M. Kh., 33, is a Libyan woman married to an Egyptian national for several years. She said she regretted her marriage whenever she thought of her fate and the fate of her son and husband, who was kidnapped by armed groups.

In her testimony to Euro-Med’s team, M. Kh. said: “If I married a Libyan national, I would have been able to obtain an identity card for my son. But because I am married to a foreign national, I cannot do so without the approval of the Ministry of Social Affairs.”

M. Kh. explained that it is difficult for her to obtain documents from the civil registry of the Libyan state, which refuses to deal with any Libyan woman married to a foreign national or with her children, especially if the marriage was concluded without the approval of the Ministry of Social Affairs.
3. Social consequences of marriage of female Libyans to foreign nationals

Toutes les restrictions juridiques susmentionnées, y compris le refus de la nationalité d’enfants nés de femmes libyennes mariées à des ressortissants étrangers ainsi qu’à leur mari, sauf dans des cas limités et soumis à des restrictions, ont toutes renforcé le refus de la communauté de marier des femmes libyennes à des non-Libyens, renforçant davantage les attitudes tribales strictes. Ce qui suit est un aperçu formé par des témoignages illustrant l’infériorité des femmes mariées à des ressortissants étrangers en Libye.

3.1 Pejorative attitude and tribe influence

The marriage of Libyan women to foreign nationals is one of the most sensitive and complex issues in terms of community acceptance. As a tribal community, Libyan women married to non-Libyan are viewed negatively despite the rising number of such cases. Women in this position are often called names, defamed, smeared, and spoken ill of and their families’ honor is defamed.

Sometimes, women involved in such marriages are assaulted and their families are pressured to have them live away. Under tribal norms, women should either marry Libyans or stay unmarried, describing the latter as “more honorable and better” than marrying a foreign national.

The influence of the tribe on granting nationality to children born to Libyan women married to foreigners cannot be denied. Women involved in a marriage relationship outside the tribe is considered an outcast,
thus denying her the right to inheritance of lands and farms owned by the family or tribe.

The matter is more cultural than political or legal, especially that the majority of Libyans trust personal knowledge about marriage, and, in contrast, they do not often trust anyone who embraces another religion, speaks another language, belongs to another nationality, or who they meet for the first time.

However, it is the law that, through its codification and legalization of this social practice, discriminates against women and violates their rights. Instead, the law should address tribal concerns through legal procedures that protect women’s rights while at the same time changing the collective perception of foreign nationals.
3.2 Libyan wives married to foreign nationals recount their stories

Recounting her story to Euro-Med’s team, A. S., 29, and a Libyan woman from the town of Zawiya, west of the Libyan capital of Tripoli, said she had married Bassem, a 27-year-old Syrian national who has been living in Libya for over 11 years. He worked as an engineer in a private company.

A. S. said: “We married in early 2014, after we got engaged. But I was faced by my parents’ rejection for no reason except that he was a foreign national. After many attempts to convince my family to marry him, nothing changed, so we decided to marry without their consent.”

She explained that she and her husband moved to the area of Janzour, west of Tripoli, and then gave birth to two children, enjoying at first a stable life despite the difficulty of living away from parents and relatives. However, the beginning of 2017 brought unexpected events.

“At the beginning of the year, two of my brothers attacked me in my house after they knew our location. They stabbed me with a sharp knife in my stomach, beat my husband really hard, and then fired at both his feet. They threatened to kill him if he did not divorce me. My older brother said to my husband, “you either divorce or die.”

She pointed out that she and her husband could not complain to the police for fear of being threatened again, especially since one of their brothers was a central security officer in the capital and, most importantly, that their marriage contract was not documented in the civil registry because they did not obtain approval from the Ministry of Social Affairs, which means that nobody in the state recognizes them as a married couple.
A. T., 35, is a Libyan woman living in Misrata. In 2014 she married Khaled, a 32-year-old Egyptian citizen, after she met him near her place of work. Her husband worked in blacksmithing.

Although her family consented to the marriage, she lost her job at the school where she worked, after the school principal dismissed her because she did not commit to return to work immediately after marriage and found that her dismissal was pressured by faculty members who considered her marriage from a foreign national a shame for the tribe and the region, according to some teachers.

A. T.’s husband quit his work at the shop as well. The shop owner informed him that he received threats of death and burning of the shop if he does not terminate the lease with him.

While studying at university in Turkey, M. S., 24, got to know Kassem, a Syrian who had fled to Turkey because of the war. She said: “After some time of secrecy, I expressed to my mother Kassem’s desire to marry me. She did not object, and said that the marriage should be legal, whereas my father initially rejected, until my mother was able to convince him. After that, he felt comfortable talking to Kassem.”

She pointed out that she and her husband applied for marriage at the Libyan embassy in Turkey in order to pass it on to the Ministry of Social Affairs, but their request was rejected on the grounds that her husband was a refugee. Yet, she married Kassem at the end of 2012 and lived since then in Turkey.
In mid-2016, she decided to return with her family to Libya to live there after she had completed her university studies. When she and her husband applied to the Ministry of Social Affairs to obtain the marriage papers, their application was refused, stating that it was illegal and was not recognized within the Libyan state. They have since lived without any Libyan papers proving their marriage or giving protection and civil rights to their children.

4. Position de la Constitution libyenne, et du droit international

4.1 Constitutional position on marriage to foreign nationals

4.1.1 The 1951 Constitution

The Constitution of Libya, issued in October 1951, regulated nationality in Articles 8-9-10. The articles considered a Libyan any person born in Libya, one of whose parents were born in Libya or who lived in Libya for at least 10 years. These articles have also stated that it is not permissible to hold Libyan along with another nationality at the same time.

However, the Nationality Act No. 17 of 1954 did not contain any reference to the right to nationality for children born to Libyan women married to foreign national, nor even to their enjoyment of civil and political rights, which contravenes the Constitution.

All the provisions of the law concerning the nationality of a Libyan woman who is married to a foreigner and her children are limited to Article 8,
which stipulates that a Libyan woman married to a foreigner may retain her nationality unless she wishes to acquire the nationality of her husband. She can restore her nationality in the event of termination of the marriage and provided that she loses her foreign nationality acquired by marriage.

4.1.2 The Constitutional Declaration of 2011

The text of the Libyan Constitutional Declaration issued by the National Transitional Council in August 2011 states that men and women are equal in rights, which means that any child born to a Libyan father or mother enjoys the Libyan nationality. Article 6 of this Declaration states that:

*Libyans shall be equal before the law. They shall enjoy equal civil and political rights, shall have the same opportunities, and be subject to the same public duties and obligations, without discrimination due to religion, doctrine, language, wealth, race, kinship, political opinions, and social status, tribal or eminent or familial loyalty.*

The basis, according to this article, is that the rights and duties are equal to men and women, and therefore, discrimination in the acquisition of nationality between Libyan males and females constitutes a violation of this constitutional declaration.

4.1.3 Drafts of the constitution of 2013

The constitution-drafting body, which was elected in 2013, issued three drafts (draft resolutions) on the status of children born to Libyan women married to foreigners, as follows:
- The first and second drafts: Both have clearly and explicitly pointed out that children born to Libyan women involved in marriage relationships with non-Libyans are not to be granted the Libyan nationality. Article 11/2 provides that “a Libyan is a child of a Libyan father”, whereas Article 13/3 only provides that “preference shall be given to granting nationality to children of Libyan women.” Article 119/6, which relates to the right to a dignified life, stipulates that Libyan children are entitled to enjoy all the rights enjoyed by Libyan citizens, except for political rights.

- The draft consensus of the draft constitution (III): Following a campaign led by a number of women’s rights organizations against the first and second drafts, and the demonstrations by Libyan women married to foreign nationals and their children in Tripoli and Benghazi, the draft consensus was brought to amend the article on nationality, where women married to foreign nationals could pass on their Libyan nationality to their children. This draft constitution is supposed to be voted by a public referendum soon.
4.1.4 The Draft Consensus Libyan Constitution Issued by the Elected Committee of 2017

The Libyan Parliament passed the referendum law of the third draft of the constitution, referred to above, which requires the approval of two-thirds of Libyans, and the need to win the vote of 50+1 in each of the three historical regions: Tripoli, Fezan, Berqa, so as to serve as a constitutional reference to the Libyan state. This draft became the official constitutional declaration currently in force in Libya.

The draft consensus constitution did not refer to the issue of the regulation of nationality except as stated in Article 10, which referred to “the provisions of Libyan nationality and how to acquire and withdraw them by law, taking into account considerations of national interest and maintaining the structure of population and easing integration in the Libyan society.”

This means that the Nationality Law No. 24 of 2010 does not recognize or grant the Libyan nationality to children whose mother is married to a foreigner remains in effect until the adoption of the draft as a constitution for the Libyan state after the referendum and the approval of the new legislative authorities which may amend the law to allow the application of the principle of equality correctly.

It is also suggested that the use of expressions of national interest and maintaining the structure of population and easing integration in Libyan society are loose texts that may be misused and misunderstood, resulting in the continued discrimination against Libyan mothers married to a foreign father compared with a Libyan father of any nationality.
The provisions of Article 7 of the Draft Consensus Constitution reassure that “citizens, (males and females) are equal before the law and should not be discriminated against.” All forms of discrimination are prohibited for any reason such as race, color, language, sex, birth, political opinion, disability, according to the provisions of this constitution.”

According to Article 12 of this Constitution, issued on April 19, 2016, children born to a Libyan mother married to a foreign national are considered Libyan, as regulated by the law. The same article also allowed Libyans to retain foreign nationality.

**Article 12**

**Nationality**

1. Every person who acquired Libyan citizenship in accordance with the provisions of the Libyan Constitution issued on 7 October 1951 and the laws passed thereunder shall be Libyan, and every person born to a Libyan father shall be Libyan.
2. Every person who acquired Libyan citizenship by law shall be Libyan.
3. Libyan nationality may be kept with another nationality.

Although it granted children the Libyan nationality, the text of this article recognizes that it discriminates between male children, who, under the first paragraph of the article, acquire citizenship by law. That is, they acquire citizenship the moment they are born by virtue of having a Libyan father. However, female children acquire citizenship after birth, their citizenship does not have an obligatory nature and is subject to the discretionary rules determined by the legislator in the relevant law.
Article 13 of the same Constitution states that: “The regulatory law shall take into account national interest, demographics, and the ease of integration into Libyan society when granting citizenship.” The text of the Constitution itself retained the possibility of revoking nationality acquired by law during the next ten years of acquisition, and Article 58/6 deprived Libyans of political rights, while granting them other rights.

It is noted that this Constitution contains some contradictions, as it seeks, through its texts and in more than one Article, to show that Libyan women and men are equal and that it prohibits discrimination between them. Article 9 states that: “Male and female citizens shall be equal before the law. There shall be no discrimination between them by way of diminishing, restricting, or depriving [of rights] in accordance with the provisions of this Constitution.”

Article 58 states: “Women are sisters of men. The State shall be committed to supporting and caring for women, enacting laws to protect them, promoting their status in society, eliminating the negative culture and social customs that belittle their dignity, preventing discrimination against them, and ensuring accessible opportunities for them in all sectors. The State shall adopt the necessary measures to support their acquired rights.”

4.2 Position of International Law

a. Nationality is a right and no one shall ever be stateless
From a pure human rights perspective, everyone shall have a right to nationality. This was the essence of the text of Article 15 of the Universal Declaration of Human Rights (1948). Article 24/3 of the International Covenant on Civil and Political Rights, which Libya had ratified without reservations in 1970, stipulates that: “every child has the right to acquire a nationality” and Article 3 of the same Covenant sets out the duty of States to ensure the equal right of men and women to enjoy all civil and political rights enshrined in the Covenant.

The United Nations Panel of Experts, which monitors the extent of States’ commitment to the implementation of the Covenant, stated that in order to fulfill the contractual obligations of the Covenant, Governments must ensure equality between men and women in the ability to grant citizenship to their children.

Also, Article 8 of the Convention on the Rights of the Child obligates States to respect the rights of children, represented in the preservation of identity and nationality from any unlawful interference. Moreover, Article 7 of the same Convention emphasized the need to ensure that children born in the territory of a State have the right to acquire its nationality.

International law, in the 1961 Convention on the Reduction of Statelessness (Articles 5 and 6 thereof), completely prohibits the loss and deprivation of nationality in the context of a change in a person’s civil status, especially if that leads to statelessness. Article 7/2 of the European Convention on Nationality expressly provides for the prohibition or deprivation of nationality in the case of dependents if this leads to statelessness.
Emphasizing this trend, the 2016 annual report of the Office of the United Nations High Commissioner for Human Rights on “Human Rights and Arbitrary Deprivation of Nationality” submitted to the Human Rights Council in 2016, document A / HRC / 25/28, stated the right of the child to nationality, including access to children born in its territory who would otherwise be stateless, as well as to a person born to a citizen abroad who would be stateless without it.

“States should ensure that these guarantees enable the acquisition of citizenship for every child who would otherwise have been without citizenship as soon as possible after childbirth,” UNHCR said.

In accordance with paragraph 43 of the 2009 document by the Office of the United Nations High Commissioner for Human Rights (document A / HRC / 13/34), decisions on nationality “should be issued in writing and be open to effective administrative or judicial review” to avoid abuse in such procedures.

b. Men and women should be equal in the rights to acquire and give citizenship to their children

Articles 2 (a) and 9 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) affirm the need for equality between men and women. They also stress need for incorporating this principle into their laws, including equality in the right to acquire nationality and to grant citizenship to their children. The Convention obliges States to grant women equal rights in terms of acquisition, retention or change of nationality, which is the same provision contained in the The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (or The Maputo Protocol), which Libya has ratified.
Article 9/2 of the Convention on the Elimination of All Forms of Discrimination against Women stipulates that States Parties shall grant women equal rights with men with respect to the nationality of their children.

Libya has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), but has made formal reservations to exempt itself from certain provisions of the Convention, including reservations to Article 2 on combating discrimination in all its forms. However, the United Nations Panel of Experts on the Implementation of the Convention said that reservations to these articles were not permitted under the provisions of the Convention and called on Libya to grant equal rights to men and women, including by amending the Nationality Code.

c. Depriving the mother's children of their nationality deprives them of the right to enjoy other basic rights

The danger of not granting citizenship to children has also to do with the serious impact to their enjoyment of the right to free education, health services, work and residence. It also causes the lack of access to aid that may be available to nationals, and sometimes from irregular forced labor, let alone being exploited by their employers, and the lack of protection enjoyed by citizens outside their own countries.
In some cases, especially in the case of divorce, children are subjected to unendurable suffering because they do not have the nationality of any country, especially if they grow up in their mother’s country. They find themselves in that country where they grew up without having their nationality, and if they want to join universities they are treated as foreign nationals regarding admission and fees.

Then, if they want to join the labor market, they face huge problems, including the need to obtain permission to work as foreigners. If such a permit is issued, it would be temporary as it is known in such cases and would need to be renewed every now and then. In addition, they are faced with difficulties obtaining residence in the country, and the need to renew their residency from time to time, not to mention the obstacles they face when traveling with their mother as non-nationals (stateless).
Recommendations

The Euro-Mediterranean Human Rights Monitor calls on the Libyan authorities to:

- Amend the Marriage Law between non-Libyans and Libyans (No. 15 of 1984) to guarantee the right of Libyan women and their freedom to choose their partner in accordance with the international conventions ratified by Libya.

- Set conditions for foreign nationals wishing to marry a Libyan woman, such as a certain period of stay in Libya without interruption, in order to dispel community fears of marriage to non-Libyans. This could also be referred to the security services to learn about their status in their countries of origin before they get married to Libyan women. Also, the Libyan authorities are urged to amend regulations specific to acquiring the permission of the Ministry of Social Affairs by setting specific conditions for disapproval to avoid arbitrary measures.

- Work on amending the Nationality Law No. 24 of 2010, so that children born to Libyan women married to foreign nationals can enjoy their right to nationality.

- Settle the legal status of any Libyan married to a foreigner and to ensure full rights for their children.
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