

TREATY BODY MONITOR

International Service for Human Rights



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COMMITTEE ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

43RD SESSION

LIBYAN ARAB JAMAHIRIYA, 2ND - 5TH REPORT

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Key facts¹

Ratification	Reservations	Party to Optional Protocol?	Other core treaties ratified
1989	Articles 2 and 16	Yes	ICERD, ICCPR, ICESCR, CAT, CRC, CMW

Information submitted to the Committee

State report

The Libyan Arab Jamahiriya submitted its 2nd report to the Committee on the Elimination of All Forms of Discrimination against Women (the Committee) on 14 December 1998² and its combined 3rd, 4th, and 5th reports on 4 December 2004.³ Libya last appeared before the Committee in January 1994.⁴

¹ The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx.

² CEDAW/C/LBY/2, available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws43.htm>.

The present combined report presents general information on the country and its institutional and legislative framework. Following the previous recommendations of the Committee, the second part of the report gives an article-by-article account of the provisions put in place to ensure compliance with the Convention. Nevertheless, the reports lack specific information requested by the Committee, specifically on updated disaggregated data on the participation of women in decision making, and access to health and education, with particular attention to discrimination against rural women. Although reaffirming Libya's commitment to comply with the obligations set out in the Platform for Action adopted at the Beijing Conference in 1995, the report does not mention the repeal of any discriminatory laws such as Article 375 of the Penal Code which states that a man who finds his wife, daughter, sister or mother in the act of adultery or in illegitimate sexual intercourse shall not be prosecuted for 'mere beating or light injury'. According to the NGO Equality Now this law is still in force⁵.

List of issues

After having studied the report, the Committee provided its list of issues to the State on 12 August 2008.⁶ It asked whether the State was considering withdrawing its general reservation to the Convention on the basis of the norms of Islamic Law. It also requested information on whether a definition of discrimination against women had been incorporated in domestic legislation and which legal measures had been introduced to guarantee the advancement of women. The Committee highlighted the lack of information in the State report on cultural and traditional patterns affecting the enjoyment by women of their rights and the need to consider repealing Law No. 70 which criminalizes adultery and abolishing polygamy. More disaggregated data was requested on women engaged in prostitution, women's participation in decision making for the years 2006 – 2007, the percentage of female primary, secondary and university graduates, and equal access to employment and health services especially for rural women.

The responses of Libya to the list of issues was submitted three weeks prior the session and, as also outlined a few times by the Committee during the session, 'are a cut and paste of the same information provided in the report'.⁷ No further information was provided.

NGO information

One non-governmental organisation (NGO), Equality Now, submitted a **written report** to the Committee.⁸ The report focuses on the presence of a discriminatory law within the Penal Code, Article 375, which sets the punishment for grave or serious injury of a wife, daughter, sister or mother caught in the act of adultery, to not more than two years of prison and to no penalization in case of 'mere beating or light injury'. There were no NGOs present at the beginning of the session to give an oral presentation on the situation of human rights in Libya.

Themes and issues

The delegation of Libya was led by Dr Huda Fathi Ben Amer, Secretary of Women's Affairs. She was supported by a delegation consisting mainly of women representatives of the Permanent Mission of Libyan Arab Jamahiriya in Geneva, Mrs Hasnia Markus from the Department of Technical Cooperation, engineers Dr

³ CEDAW/C/LBY/5, available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws43.htm>.

⁴ Available at <http://www2.ohchr.org/english/bodies/cedaw/sessions.htm>.

⁵ Available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/EqualityNow_43.pdf.

⁶ CEDAW/C/LBY/Q/2, available at www2.ohchr.org/english/bodies/cedaw/cedaws42.htm.

⁷ Committee member Ms Rasekh.

⁸ The NGO reports are available at www2.ohchr.org/english/bodies/cedaw/cedaws42.htm.

Ftema Yousef Wafa and Safia Ibrahim Ben Amer, the General People's Committee of Justice Mrs Bahija and Mahmoud El Ayeb, the General People's Committee of General Security Mrs Zohra Giuma Ben Atia, the Councillor at the United Nations Department Mr Elmahdi S. Al Majerbi, the Department of United Nations and International Organisations Mrs Suad O. Anbar, and the Secretariat of the General People's Congress Mrs Naima Khalifa Ahmed. The delegation also hosted the representative of a business women's NGO which did not appear on the official list of delegates submitted to the OHCHR.

The delegation's introductory statement lasted 30 minutes and it was a mere repetition of the main issues touched upon in the State report. The head of delegation highlighted numerous times the absence of discriminatory laws in domestic legislation, the equality of women and men before the law and the fact that Libya was a pioneer in terms of enhancing women's political participation.

Status of the Convention

Ms Jaising and Ms Gabr asked the State to withdraw its reservations to Articles 2 and 16, which limit the application of the Convention only as it is determined to comply with the norms of the Islamic law, as the Committee was of the view that such reservations to core articles of the Convention contradict the *Vienna Convention on the Law on Treaties*. Mr Flinterman highlighted the absence of a definition of discrimination and the lack of any court cases referring to the Convention. He asked whether the latter prevails over domestic legislation and if any visibility has been given to the Optional Protocol. The delegation claimed that there was no definition of discrimination in domestic legislation as the Koran, for which all men and women are equal, constituted its basis. Therefore, any definition of discrimination is unnecessary. Islam, Dr Amer continued, is the law of the land and any other legislation must be consistent with it. This explains, for example, why inheritance laws strictly favour men. Nevertheless the legal system of the Jamahiriya gives priority to the implementation of international conventions and there are ongoing workshops to review and amend some laws and regulations, such as those concerning guardianship and personal status in marriage and divorce.

Violence against women

Miss Jaising lamented the absence of data in the report on remedies and laws which deal with violence against women. She noted that women and girl victims of rape are subject to institutionalization as a form of custody and protection from stigmatization which *de facto* isolates and excludes them from the community. Miss Halperin-Kaddari raised the issue of the common practice of virginity tests before commitment for marriage and also asked whether the State had followed up on the concluding observations of the Human Rights Committee regarding the detention centres for women and the introduction of special measures to protect victims of domestic violence. The Committee also lamented the lack of any legislative prohibition of spousal rape and the practice of the rapist having to marry his victim in order to avoid prison. It also noted that there is no rehabilitation program for perpetrators.⁹ The Committee expressed concern especially over information on the Bhanghazi facility and the use of **rehabilitation centres** to detain women and girls who have been sexually assaulted. The delegation stated that those centres are a means of protection for women which provide them with possibly too excessive luxury.

Miss Halperin-Kaddari asked whether the State party was considering repeal *Law 17*, which criminalizes extramarital sexual relations. The head of delegation affirmed that Libyan society is 'different from the Western world' and that, according to their culture, girls must be virgins before marriage. There is therefore a social need to investigate. Detention centres are used to protect women since society would not accept them for committing adultery or prostitution. The delegation also reaffirmed that husbands who rape their wives will not be penalised if there is no other offence. According to Dr Amer, often conflicts are resolved within the society without involving legislation and this is a custom which needs to be respected. Ms Halifa, on

⁹ Ms De la Vega.

behalf of the business women's NGO, pointed out 'we hope women in the world have the same rights that women in Libya enjoy'.

Trafficking in persons

Ms Popescu commended the ratification of the *Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, but lamented the absence of prevention measures. No answer was provided in the written replies on data and special police departments dealing with prostitution. Miss Chutikul asked whether there had been any follow up to the recommendation of the Committee for the Rights of the Child to carry out in-depth research on the number, nationality and age of children involved in trafficking and if any training is taking place in police stations, judicial departments and so forth. The delegation rejected the idea of women and girls falling into prostitution as a way to make a living since the State religion condemns these practices and also added that in Libya women are not allowed to exploit their body and it is instead a feature of western and developed countries to use women only for their bodies and image. The head of delegation called on developed countries to 'wake up and stop the exploitation of women'.

Women's political participation

Ms Zerdani regretted the very small number of women in Parliament, only 4%, which contradicts the large percentage of women with high education. The Committee refused to accept this situation as a matter of religion since other Muslim countries have taken steps forward in this field. The Committee requested more data on women's political participation as well as the number of women representatives in the diplomatic core. The delegation claimed that all places in Libya have congresses of which all citizens, men and women, are members. Women are represented in all the institutions and universities and the rate of graduate women is about 70%. In the diplomatic core, the delegation claimed the absence of any discrimination, and although there are no quotas in place women are still privileged. Indeed there is not a single embassy without women, except for countries in conflict zones. According to the delegation, Libya was a pioneer in having a woman as an ambassador and there are a large number of women representing the country in all parts of the world. The delegation admitted, however, that they did not have statistics on this. The Committee urged the delegation to introduce a better and comprehensive system for the collection and classification of data since there is no reliable and up-to-date information in the report and in the replies.

Education and health

The Committee asked for more data on the curriculum, segregation of girls, and the number of women working as educators and head of schools. Ms Halperin Kaddari regretted the fact that the Government of Libya retracted this year from the Education for All (EFA) Programme limiting the possibility of children that have a non-Libyan father to enrol in school without fee charges. The dropout rate for girls in rural areas is still very high and the Committee requested more data on this issue, as well as on girls living in rehabilitation centres who are exclusively taught religion and sewing. The delegation stated that the Government does not discriminate against any Libyan children who wish to enrol in schools. In 1999 Libya was able to achieve some of the MDGs (although it was not specific on this) even if there is a lack of expertise in the categorization of information and disaggregated data.

The Committee requested the State to provide further details on progress in healthcare, achievements, and shortcomings of any measures and programs introduced to provide free medical services to all citizens. The Committee also requested information on maternal mortality, access to clean water and sanitation, and the percentage of women with HIV/AIDS in rural areas. The delegation responded that emergency assistance is free of charge and 92.5% of Libyan women receive [free?] medical care, 62% deliver in public hospital free of charge, and life expectancy is high. The delegation claimed that awareness raising campaigns were

undertaken in schools on AIDS and a program to supervise HIV-infected people was also being conducted in partnership with the World Health Organisation.

NGO participation

Many members of the Committee mentioned the absence of any reports submitted by Libyan NGOs, the lack of data on the number of NGOs in the country and of an independent institution for human rights in conformity with the Paris Principles. Dr Amer pointed out that any group of women has the right to set up an association, which in fact are numerous within the country, as also shown by the presence at the session of two members from a business women's association. She pointed out that in Libya the role of civil society is 'not indispensable like in other regimes since Libya enjoys a system of direct democracy. Ms Awori also highlighted the absence of collaboration of NGOs in the preparation of the State report but the delegation responded that civil society had been previously consulted.

Other issues

Regarding **citizenship**, the Committee expressed concern that only the nationality of the father can be transferred to the children. The delegation assured that laws are being amended and in the near future children will be able to also acquire the nationality of the mother.

Concerning **abortion**, the delegation stated that it is only permitted under request of the woman and exclusively after consultation of the doctor, although the Penal Code only allows the interruption of pregnancy in order to save the life of the mother.

Conclusions and next steps

The State delegation apologised for taking too much time in answering the questions and committed to provide in the next examination more statistics and disaggregated data which were not available at the present session.

The Committee thanked the delegation for engaging openly in the constructive dialogue.

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