

# Libyan Women's Demands in the Constitution

January 2015

## **Libyan Women's Demands in the Constitution**

### Introduction

The below list of women's demands for the constitution is an outcome of a process lasting several months engaging women's representatives from various groups and locations in Libya. Apart from consultations held in Libya, the process included a meeting of over 70 Libyan women activists, which took place in Cairo November 2014 and resulted in developing an initial set of women's demands for the constitution, which was presented to, and discussed with, the Constitutional Drafting Assembly (CDA) in the city of Al-Baydha. While the present list of demands was developed during a four day meeting held in Tunis in January 2015, which brought together 35 Libyan women activists. In the course of this meeting, the Libyan women conducted a series of in depth reviews and exhaustive analysis to the text of the preliminary outcomes of the CDA's substantive committees, as presented by the CDA on 24th of December 2014.

The CDA's preliminary proposed texts were analysed from a gender perspective (and citizenship rights) and based on international good practices and standards. The meeting participants have collectively agreed on the formulations of the following recommendations and addressing them to the CDA. It was also agreed that the process of advocating for women's demands will continue. In the course of the upcoming months, the women activists will liaise directly with the CDA members on the inclusion of their demands in the drafting process, and will further mobilise more civil society groups and individuals to support activities aiming at ensuring that the future Libyan constitution ensures full gender equality and protects the rights of women.

This paper contains all demands that Libyan women wish to include in the draft constitution, which will be presented to the Libyan people for referendum. Moreover, this paper will be the basis for several other papers that will be designed to address each of the substantive committees vis-à-vis their preliminary outcomes so that they can take them into consideration when they amend and review their proposals.

## Libyan Women’s Demands in the Constitution

### Summary of the Demands

Thematic Committee	Topic	Demands (Removal/Addition/Amendment)	Current Wording	Proposed Article
<b>Form of State and Fundamental Cornerstones</b>	Source of legislation	<p>Remove of the first part of Article 7 “Identity”</p> <p>Amend Article 8 “Sources of Legislation” in the proposal of the First Committee “Form of the State and Fundamental Cornerstones”, by replacing the phrase “Provisions of Islamic Sharia are the source of all legislations” with “The principles of Islamic Sharia are the basic source of legislation”.</p>	<p>“Libya is <del>an Islamic State</del>, part of The Great Arab Maghreb and part of Africa...”</p> <p>“Islam shall be the religion of the State, The <del>provisions</del> of Islamic Sharia shall be <del>the source of all legislations</del>. Any legislation in violation thereof ...”</p>	<p><b>“Libya is part of the Great Arab Maghreb and part of Africa...”</b></p> <p><b>“Islam is the religion of the State, the <u>principles</u> of Islamic Sharia are the main source of legislation, no legislation shall be passed in contradiction with them”</b></p>
	International Agreements and Treaties	<p>Amend Article 17 by adding a clear statement that the State respects all international agreements, including those related to human rights and women’s rights in particular.</p> <p>Remove the phrase “provided they are not contrary to the Islamic Sharia” and compensating with “principles of Islamic Sharia”.</p>	<p>“The State shall commit itself to the international treaties and agreements which it ratifies, <del>with emphasis on the principle of reciprocity</del>. These shall be supra-legal and <del>infra-constitutional</del>, provided they are not contrary to the <del>provisions of</del> Islamic Sharia”</p>	<p><b>“The State shall commit itself to international agreements, treaties and covenants on human rights and women’s rights that it ratifies. They shall be supra-legal, provided they are not contrary to the <u>principles</u> of Islamic Sharia”.</b></p>
	Non-permissibility of withdrawal of nationality without a court decision.	Amend Article 11.	<p>“Revocation of Libyan nationality for any reason whatsoever shall be prohibited. <del>It may be withdrawn within 20 years following naturalization. Cases of withdrawal shall be</del></p>	<p><b>“Revocation of the Libyan nationality shall be prohibited for any reason. <u>The Nationality cannot be withdrawn unless in accordance with a final court decision</u>”.</b></p>

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Thematic Committee	Topic	Demands (Removal/Addition/Amendment)	Current Wording	Proposed Article
			established by law”.	
Form and System of Governance	Representation of women in elected Councils.	Remove the article related to elections (Page 7) and the article related to candidacy according to the individual list system (page 8) under Transitional Measures Roadmap.	<del>“Any electoral system shall ensure a quota for women not less than 30% for 3 successive parliamentary terms”.</del>	<b>“The State shall commit to taking necessary measures to ensure a representation of women not less than 45% in all elected councils, in addition to ensuring the fair representation of women in cultural components seats.</b>
		Addition of an article at the beginning of The Part on the Form and System of Governance.	<del>“The electoral system shall ensure prohibition of candidaey according to the individual list system for 3 parliamentary terms”</del>	<b>The legislator shall commit to adopt an electoral system that guarantees such percentage of women representation.”</b>
	Representation of women in the executive authority and decision making positions	Add an article at the beginning of the executive authority chapter in the Part on the Form and System of Governance.	None	<b>“The State shall commit to representing women in the government as well as political, administrative and diplomatic decision making positions with a percentage not less than 45%”.</b>
The Judiciary and Constitutional Court	Representation of women in the Constitutional Court	Add to Article 22 of Part 4: “The Constitutional Court”	“The Court shall comprise eleven members, including its president and vice-president. The High Judicial Council shall nominate...”	<b>“The Court shall comprise eleven members, including its president and vice-president. <u>The state shall commit to ensuring the representation of women within the Constitutional Court with a percentage of no less than one third.</u> The High Judicial Council shall nominate..”</b>
	Representation of women in the Higher Judicial Council	Add to Article 8 of Chapter 2: “The Higher Judicial Council”	“The Higher Judicial Council shall comprise...”	<b>“<u>The State shall commit to ensuring the representation of women within the Higher Judicial Council with a percentage of no less than one third</u>”</b>
	Equal Opportunity in Progression in the Judicial Functions	Add to Article 2 of Chapter 1: “General Provisions” in Part 3: “The Judiciary”	“Members of the Judiciary”	<b>“<u>The State shall commit to ensuring progression in judicial functions based on equal opportunity without any discrimination between men and women</u>”.</b>

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Thematic Committee	Topic	Demands (Removal/Addition/Amendment)	Current Wording	Proposed Article
Independent Institutions	Establishment of a Supreme Council for Women	Add a new article in the Part: “Independent Institutions”.	None	<b><u>“The State shall commit to establish a Supreme Council for Women and a Fund to promote women and ensure a percentage of the State Budget for this purpose.”</u></b>
	Representation of women in Independent Institutions	Add to Article 2 of Part 8: “Independent Institutions”	“The legislative authority shall elect with two-thirds majority... ”	<b><u>“The State shall commit to ensuring a representation of women in all independent institutions with a percentage not less than 45%”.</u></b>
Rights and Liberties and Provisional Measures	Guaranteeing rights acquired by women	Add a new article	None	<b><u>“The State shall commit to guaranteeing the rights and liberties acquired by women as well as taking all necessary measures to support and promote them.”</u></b>
	Equality and non-discrimination	Remove Article 13 from the Part on: Fundamental Cornerstones and the first paragraph of the Article on The Right to Equality Between Male and Female Citizens (The Part on Rights and Liberties – Page 2)  Add a new article to the Part on Rights and Liberties	<del>Male and female citizens are equal before the law. They are equal in civil, political, economic, social and cultural rights as well as in duties and common costs in accordance with the provisions of the Constitution</del>	<b><u>“Male and female citizens are equal before the law. They shall have equal enjoyment of civil, political, economic, social and cultural rights as well as equal opportunities without discrimination based on race, gender, language, origin or any other basis. It shall also ensure equality among them in duties and common obligations in accordance with the provisions of the Constitution”</u></b>
	Equality between men and women with regards to nationality rights	Move Article 10 from the Part on Fundamental Cornerstones to the Part on Rights and Liberties, and amend its second paragraph	“2- A Libyan citizen is any person who is born to a Libyan father or obtains the Libyan nationality subsequently under a law in force”	<b><u>2- The right to nationality shall be a genuine right of every citizen. Everyone born to a Libyan father or <u>mother</u> or naturalized later under the law in force shall be Libyan”</u></b>
	Representation of women in political parties	Add to the Article on Political Parties in the Part on Rights and Liberties	“Every citizen shall have the right to choose his political orientation”	<b><u>“The State shall commit to take the necessary measures to ensure the representation of women in leadership structures in parties and unions.”</u></b>
	Equality of women in social security	Add a new article to the Part on Rights and Liberties	None	<b><u>“The State shall commit to ensuring equality in obtaining and benefiting from a unified system of social security without</u></b>

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Thematic Committee	Topic	Demands (Removal/Addition/Amendment)	Current Wording	Proposed Article
				<b>discrimination on the basis of gender.”</b>
	Criminalizing violence against women and underage and forced marriage	Add to paragraph 3 in the Article on the Prohibition of Discrimination Against Women in the Part on Rights and Liberties	“All forms of discrimination against women shall be prohibited...”	<b><u>“The State shall commit to issuing the necessary legislations to criminalize all forms of violence against women and girls, underage and forced marriage”.</u></b>
	Maternal and child care	Amend the Article on Rights of the Child	“The State shall take the necessary measures for children to enjoy their rights as follows...”	<b><u>“The State shall commit to taking the necessary measures to provide <u>maternal and child care</u> and for children to enjoy their rights as follows...”</u></b>
	Ensuring the right of movement for women	Amend the Article on the Right to Residency and Movement	“The State shall guarantee citizens the right to unrestricted movement and transfer of properties within the Libyan Region...”	<b><u>“The State shall guarantee male and female citizens the right to unrestricted movement and transfer of properties, <u>inside and outside the Libya</u>”</u></b>
	Free and compulsory education for girls	Add a new paragraph to the Article on the Right to Education	“Every person shall have the right to education...”	<b><u>“The State shall also guarantee the right and quality of free education in accordance with international standards. It shall develop educational curricula in accordance with international human rights conventions, and shall guarantee compulsory education until secondary level or equivalent for boys and girls.”</u></b>
	Amend the term “spinsters”	Amend the Article on The Right to Decent Life	“2- Provision of a decent life for retirees, divorced women, widows, female heads of households and female spinsters”	<b><u>“2- Provision of a decent life for retirees, divorced women, widows, female heads of households and <u>women who have never married</u>”</u></b>

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Thematic Committee	Topic	Demands (Removal/Addition/Amendment)	Current Wording	Proposed Article
Natural Resources	Representation of women in wealth management institutions	Add to Article 2 of the Part on Natural Resources	The state shall commit to managing such wealth and resources through institutions charged with planning and exploitation, managing their revenues and exercising oversight and follow up in accordance with the law	<b>“The state shall commit to managing such wealth and resources through planning and exploitation institutions, as well as managing such revenues and exercising oversight and follow up in accordance with the law, <u>provided that it ensures at least 45% representation of women in such institutions</u>”.</b>
General Provisions	Non-permissibility of Constitutional amendments vis-à-vis women’s rights	Add a new article	none	<b>“The Constitution shall not be amended in a manner that leads to retracting human rights guaranteed by the Constitution, in particular women’s rights. The Constitutional Court shall have the competency to ensure the extent of commitment by proposed or draft constitutional amendments in this regard.”</b>
	Neutral Language	Add a new article	none	<b>“The masculine form in the constitutional text refers to males and females alike”</b>

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### Part on the Form of State and Fundamental Cornerstones

#### Source of Legislation

Proposal: Remove the first part of Article 7 "Identity": "Libya is an Islamic State" and amend Article 8 "Sources of Legislation" from the proposal of the First Committee "Form of State and Fundamental Cornerstones". The phrase "provisions of the Islamic Sharia shall be the source of all legislations" shall be replaced with "the principles of Islamic Sharia are the main source of legislation". The remaining paragraphs shall be removed.

Proposed article:

**"Islam is the religion of the State; the principles of Islamic Sharia are the main source of legislation"**

Grounds:

- Islam is the religion of male and female Libyan citizens. It is among the basic elements that determine the identity of the Libyan people. There is no argument about this issue.
- Articles 7 and 8 are repetitive in terms of "Libya is an Islamic State" and "Islam is the religion of the State". It would be better to remove the first and keep the second in Article 8 on Sharia as a source of legislation.
- Islam is a religion that enshrined equality in humanity and dignity, without discrimination between men and women, which is among the most important principles of human rights. Several verses of the Quran support this interpretation. For instance, in the Quran we can find emphasis on equality in humanity and dignity: Sura An-Nisa, Verse 1: "*O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women. And fear Allah, through whom you ask one another, and the wombs. Indeed Allah is ever, over you, an Observer*"; Sura Al Nahl, Verse 97: "*Whoever does righteousness, whether male or female, while he is a believer - We will surely cause him to live a good life, and We will surely give them their reward [in the Hereafter] according to the best of what they used to do.*"; Sura Al Roum, Verse 21: "*And of His signs is that He created for you from yourselves mates that you may find tranquility in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought.*"
- The term "principles" allows for an active interpretation of the religious text, which combines the factors of time, social, political and cultural changes experienced by modern Muslim societies. There is no discord in this regard among the Sunni Muslims. However, the term "provisions of Sharia" allows for different interpretations and discord in implementation.
- The definition of principles is legally established. The Egyptian Supreme Constitutional Court issued a ruling in this regard (Case 8/Judicial year 17): "No legislative text shall contradict irrefutable Sharia provisions, since such provisions are the only ones in which interpretation is prohibited because they represent the fundamentals of Islamic Sharia, which cannot be interpreted or altered."

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### **International Agreements and Treaties**

Proposal: Amend Article 17 "International Agreements and Treaties" of the Part on the Form of State and Fundamental Cornerstones by adding a clear statement that the State respects all international agreements, including those related to human rights and women's rights in particular. The following statement should be removed "provided they are not contrary to the Islamic Sharia"

Proposed Article:

**"The state shall commit itself to international agreements, treaties and covenants on human rights and women's rights that it ratifies. They shall be Supra-legal, provided they are not contrary to the principles of Islamic Sharia."**

Grounds:

- Obligations signed by the State with other states or international organizations are an expression of its free will. Therefore, and based on the continuity of State notion, such agreements remain binding to the State in spite of successive governments, unless the State declares withdrawal from the agreement.
- Libya ratified several international agreements on human rights, particularly women's rights (International Covenant on Civil and Political Rights on 15 May 1970, International Covenant on Economic, Social and Cultural Rights on the same date, Convention on the Elimination of All Forms of Discrimination against Women on 16 May 1989 and Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on 18 June 2004), therefore, the State is obliged to implement these agreements.
- Moreover, the system of agreements allows for the expression of reservations (e.g. reservation on CEDAW), as such, it may not be possible to impose on the State obligations that contradict the Islamic Sharia or customs and traditions.

### **Non-Permissibility of Withdrawal of Nationality without a Court Decision**

Proposal: Amend Article 11 of the Part on the Form of State and Fundamental Cornerstones. It should be replaced with the following:

Proposed Article:

**"The Nationality cannot be withdrawn unless in accordance with a final court decision".**

Grounds:

- Maintain acquired rights that have been legally established for many years.

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- Ensure that reviewing of nationality status is not used as a political tool against rivals of any subsequent regime, hence placing it under the judicial oversight.

### Form and System of Governance

#### **Representation of Women in Elected Councils**

Demands: Remove the article related to elections (Page 7) and the article related to candidacy according to the individual list system (page 8) under Transitional Measures Roadmap. The following article should be added at the beginning of the Part on the Form and System of Governance.

Proposed Article:

“The State shall commit to taking necessary measures to ensure a representation of women not less than 45% in all elected councils, in addition to ensuring the fair representation of women in cultural components seats.

The legislator shall commit to adopt an electoral system that guarantees such percentage of women representation.”

Grounds:

- This Article should be applied to all elected councils as specified by this Constitution, including Article 4 of Section I “House of Representatives” and Article 15 of Section II “Shura Council”, both of which are listed under Chapter 1 “The Legislative Authority” under the Part on Form and System of Governance. Moreover, it should be applied to Article 4 “Election of Governorate Council” and Article 5 “Representation in Local Councils” of the Part on Local Governance and Local Administration (Proposal One: Governorates System); or Article 8 “Methods of Selecting the Commission on the Regions” of the Part on Local Governance and Local Administration (Proposal Two: Regions System).
- Women are half of the Libyan population; additionally, percentage of educated and outstanding women in schools and universities is high. Therefore, their presence in decision-making positions becomes an entitlement that may not be denied due to the lack of competence for example.
- Occupying political decision-making positions allows women to achieve tangible change regarding the situation and status of women in society, and provide an alternative perspective to public policies (Establishment of social peace since women interact with these issues in a special manner, providing services and public facilities not only for women, but also for vulnerable groups. Women are naturally capable of providing care and protection, they give life through birth, therefore should be more able to protect life).

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- It is often the case that new laws that upholds the rights of women are enacted in parliaments that have high representation of women, such as Nepal, Costa Rica, Rwanda and Spain. When the quota system was applied to increase the number of women in parliaments, progressive laws were passed regarding property rights, violence against women, health care and labor.
- Enabling women to reach decision-making positions does not mean that they are competing with men or depriving men of their rights. The aim, however, is to bridge the gap at the social and human rights level.
- The electoral system has a direct impact on the representation of different political components and social sectors, including women and minorities. Thus, the State, particularly the legislator, have to select the appropriate electoral system that could guarantee the representation of such groups and sectors on the results level, not just the candidacy level (list system - proportional representation – quota system).
- Grounds related to positive measures (please see above).

### **Representation of Women in the Executive Authority and Decision Making Positions**

Proposal: Add an article at the beginning of the executive authority chapter in the Part on the Form and System of Governance.

Proposed Article:

**“The State shall commit to representing women in the government as well as political, administrative and diplomatic decision making positions with a percentage not less than 45%”.**

Grounds:

- Representing women in the executive authority and different decision-making position is a matter of equality and equity.
- Amplifying women’s voice in making and taking decisions ensures that policies reflect the needs and aspirations of women.

## The Two Parts on the Judiciary and Constitutional Court

### **Representation of Women in the Constitutional Court**

Proposal: Amend Article 22 of Part 5 on the “Constitutional Court” by adding the following paragraph:  
Proposed Article:

**“The state shall commit to ensuring the representation of women within the Constitutional Court with a percentage of no less than one third”.**

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Grounds:

- Women representation in the Constitutional Court is a matter of equality and fairness.
- The presence of women within the judicial decision-making process creates balance and is essential to ensure the protection of women rights enshrined in the Constitution.

### **Representation of Women in the Higher Judicial Council**

Proposed amendment: Amend Article 8 of Chapter 2 on "Higher Judicial Council" under Part 3 on "Judiciary" by adding the following paragraph:

Proposed Article:

**“The State shall commit to ensuring the representation of women within the Higher Judicial Council with a percentage of no less than one third”.**

Grounds:

- The importance of effective participation of women in the composition of the Higher Judicial Council as a professional structure responsible for the application of recognized guarantees for judges and supervision of their professional performance.

### **Equal Opportunity in Progression in the Judicial Functions**

Proposal: Amendment of Article 2 of Chapter 1 on "General Provisions" of Part III on "Judiciary" by adding the following paragraph:

Proposed Article:

**“The State shall commit to ensuring progression in judicial functions based on equal opportunity without any discrimination between men and women.”**

Grounds:

- The career in the judicial profession is based on progression. However, the proportion of female judges occupying senior judicial positions is generally low which may indicate that promotion often reflects discrimination against them.
- Representation of women in the judiciary is a matter of equality and fairness; however, it is also important to maintain the confidence of the public in the judicial system.
- Evidence has proved that female judges can create environments more conducive for women in the courts and could make a difference in the results.
- A balanced and impartial judicial decision-making process is essential to ensure access to justice for women who resort to the court.

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### Part on Independent Constitutional Institutions

#### **Supreme Council for Women**

Proposal: Addition of an article to Chapter 2 of Part 8 on "Independent Constitutional Institutions".  
Proposed Article:

**"The State shall commit to establish a Supreme Council for Women and a Fund to promote women and ensure a percentage of the State Budget for this purpose."**

Grounds:

- The Council represents an independent authority, regardless of the other institutions that may be established, such as ministries or other government bodies. It functions as a guarantor of the rule of law underpinning any democracy, which requires a certain extent of remoteness from the political power.
- The Council is an implementation mechanism of the principle of equality and non-discrimination.
- The Council shall develop reports on the situation of women on the ground.
- It proposes draft laws on the subject based on inputs and facts that can be obtained through studies carried out within the framework of its mission as an observatory for women rights.
- It is imperative that the Council is consulted in relation to all the measures and legislations that may be adopted on women.
- Of the comparative international experiences, Canada, Colombia, India and South Africa stand out as models for states that created independent constitutional bodies to monitor the implementation of the provisions on gender equality.
- The Council shall work to establish successful public policies for the advancement of women rights and development of their capabilities, which requires allocation of adequate funding.

#### **Representation of Women in the Independent Constitutional Institutions**

Proposal: Amendment of Article 2 of Part VIII on "Independent Constitutional Bodies" by adding the following paragraph:

Proposed text:

**"The State shall commit to ensuring women representation in all independent constitutional institutions by no less than 45%."**

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Grounds:

- Representation of women in the independent constitutional institutions is a matter of equality and fairness.
- Women participation in these institutions at an influential percentage is important as one of the basic guarantees of democracy, good governance, rights and liberties.

### The Two Parts on “Rights and Liberties” and “Transitional Measures”

#### Ensuring the Acquired Rights of Women

Proposal: Add the following Article to the Part on Rights and Liberties:

Proposed Article:

**“The State shall commit to ensuring the acquired rights and liberties of women, and shall work to take all necessary measures to support and develop them.”**

Grounds:

- Based on the general legal principle of non-derogability of the rights and liberties already enshrined and guaranteed by law. As such, the gains of women in Libya have multiplied over the years. Therefore, it is unreasonable, during the historic opportunity presented by the transition, to set these gains (e.g. the right to vote and run for elections since 1964, the Personal Status Law, Labor and Civil Service Law ...) as the ceiling, they should rather be the starting point to go forward for the better. In addition, comparative experiences of democratic transition have proved that the process of drafting new constitutions has provided an opportunity for women to integrate/enhance the principle of gender equality in the legal fabric in their countries. Accordingly, the drafters of the Libyan Constitution should guarantee these gains and support their advancement.

#### Equality and Non-Discrimination

Proposal: Remove Article 13 from the Part on “Basic Cornerstones” and the first paragraph of the Article related to the right to equality among male and female citizens (Part on Rights and Liberties – page 2) and addition of the following article to the beginning of the Part on Rights and Liberties.

Proposed Article:

**“Male and female citizens are equal before the law. They shall have equal enjoyment of civil, political, economic, social and cultural rights as well as equal opportunities without discrimination based on race, gender, language, origin or any other basis. It shall also ensure equality among them in duties and common obligations in accordance with the provisions of the Constitution.”**

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Grounds:

- Equality:
  - Recognition of the general principle of equality and non-discrimination so that it applies to all rights guaranteed in that Part and to avoid indication of ensuring these rights for men and women in each and every article, particularly that the aspiration and goal of all Libyans is to build a united, stable and secure country. This can only be achieved on basis of citizenship, which is the denominator and the thread that connects all Libyans.
  - Citizenship is based on recognition of equality among all Libyans, men and women alike, before the law and in rights and liberties while ensuring their right to dissent, and allowing opportunities and possibilities to express the aspects of this difference. Equality does not mean uniformity and denial of privacy but it rather ensures pluralism within the framework of the unity of the state. It is a symbol of prosperity.
  - Unity and solidarity can only be ensured by renouncing all forms of discrimination among all the people of Libya, whether on basis of race, language, religion, tribal affiliation or any other form of discrimination.
  - The refusal to recognize the rights of the other and forcing them to give up their privacy is one of the gravest forms of injustice, which could lead to a hostile feeling that can turn into violent practices that will dissipate the unity of the community and the State.
  - During the last thirty years, a significant progress has been achieved in the legal reform in favor of women rights. At the global level, 139 constitutions enshrine guarantees for gender equality and prevention of discrimination on basis of sex.
- Positive Measures:
  - Adoption of positive measures to ensure equal opportunities is not considered an infringement of the principle of equality and non-discrimination.
  - There is a gap between the well-formulated texts that guarantee rights and liberties and the reality or practice. The reason for this is the deeply rooted structural social barriers that require taking positive measures in order to give momentum to the social groups, women in particular, in order to make men and women equal in reality and not only in legal texts.
  - If the issue of women representation is left to the will of citizens or voters, women will not get the number of votes required for winning due to the patriarchal nature of the society and the perception of political affairs as a purely masculine issue (e.g, during the General National Congress elections in 2012, only one woman among 120 members was elected by the individual ballot method without adopting the quota system; no woman was elected outside the quota system during the elections of the Constitutional Drafting Assembly).

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- One hundred and eight (108) countries follow special measures to enhance the representation of women in leadership positions through a number of mechanisms, such as parity, constitutional, legal or voluntary (adopted by the parties on their own) quota systems and the quota system for women.
- Among the 28 countries that have reached or exceeded the limit of 30%, which is the internationally accepted limit for women representation in national parliaments, at least 23 of them have used the quota system.

### **Equality between Men and Women in relation to Nationality Rights**

Proposal: Move Article 10 of the Part on “Fundamental Cornerstones” to the Part on “Rights and Liberties” and amend paragraph 2 to read as follows:

Proposed Article:

**“The right to nationality shall be a genuine right of every citizen. Everyone born to a Libyan father or mother or naturalized later under the law shall be Libyan.”**

Grounds:

- Based on citizenship and the principle of equal rights and liberties, it is unreasonable to enable the father of granting nationality to his children and to deprive the mother of that.
- Constitutionalism ensures continuation. This shall preserve the rights of the child and avoid depriving them of all the services, access to facilities and social coverage such as health and education from birth to the age of 18 years due to the mother’s marriage to a non-Libyan contrary to what is applicable to the children of the Libyan nationals. There is also the concern of compromising the rights currently established by a law or political decision through subsequent legislations.
- Based on the comparative international experiences, a significant number of Arab states adopted empowerment of women a few years ago including their right to grant citizenship to their children like Algeria, Palestine, Morocco, Egypt and Tunisia.

### **Representation of Women in the Political Parties**

Proposal: Amend the Article on Political Parties under the Part on Rights and Liberties by adding the following paragraph:

Proposed Article:

**“The State shall commit to take the necessary measures to ensure the representation of women in leadership structures in parties and unions”**

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Grounds:

- The parties, unions and associations are fundamental frameworks to express the various views, needs and expectations of all segments of society in democratic countries.
- The representation of women in the leadership structures of political parties and trade unions is a prerequisite to ensure effective participation of women, as well as representation of women demands in all frameworks and political forums.

### **Equality of Women in Social Security**

Proposed Amendment: Addition of the following article to the Part on Rights and Liberties.

Proposed text:

**“The State shall commit to ensuring equality in obtaining and benefiting from a unified system of social security without discrimination on the basis of gender.”**

Grounds:

- This right is a logical consequence of the exercise of the right of women to work and perform the duties and specifically to pay taxes on basis of equality and non-discrimination.

### **Criminalization of Violence against Women, Underage and Forced Marriage**

Proposed Amendment: Add the following phrase to paragraph 3 of the Article related to prohibition of discrimination against women under the Part on Rights and Liberties.

Proposed text:

**“The State shall commit to issuing the necessary legislations to criminalize all forms of violence against women and girls, underage and forced marriage.”**

Grounds:

- The Article on prohibition of discrimination against women refers to prohibition of violence against women. What is required is to criminalize it, not only to take measures to prevent it, but also to ensure punishment.
- Violence against women and girls is among the extreme violations of inequality and gender discrimination. At the same time, it is a lethal tool used to maintain the inferior position of women.
- Violence against women is one of the problems of public health.
- Violence against women cannot be considered a form of cultural specificities since violence constitutes a violation of the physical and psychological sanctity, particularly to the dignity of

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women. It is also unreasonable to invoke the Islamic law in this regard, as the beating stipulated in Sharia is non-aggravated beating with the stick used to clean the teeth [Siwak] or toothbrush, which is a way to express dissatisfaction and anger among couples rather than a means of discipline. However, this right is practically misinterpreted which results in abusing and insulting women. Accordingly, these anomalous practices must be criminalized.

- Violence against women is quite patterned and considered normal, and this should be addressed in the Constitution.
- Violence against women should be criminalized under the Constitution in addition to ensuring elimination of impunity for the perpetrators, particularly that the Council of Ministers issued the Resolution No. 119 of 2014 **in May 2013** addressing the conditions of victims of sexual violence, as the current legislations fail to provide adequate protection for women in the this regard. The resolution provides for the forms of reparation, including compensation, health care, psychosocial - social support and shelter. It also provides for legal assistance to enable the victims prosecute the perpetrators of these crimes.
- Criminalization of underage marriages as early marriage reduces the chances of girls in education and exposes them to the risk of early pregnancy and childbirth, which are among the causes of death among girls.

### **Maternal and Child Care**

Proposal: Addition of the following article to the Article related to the Rights of Children under the Part on Rights and Liberties.

Proposed Article:

**“The State shall commit to taking the necessary measures to provide maternal and child care.”**

Grounds:

- Commitment of the State in this area is an integral part of the efforts exerted to promote gender equality.
- It is necessary to emphasize the social significance of maternity, as the role of women in procreation should not be a basis for discrimination against them.
- Upbringing of children requires shared responsibility between men and women and society as a whole.

### **Ensuring the Right of Movement to Women**

Proposal: Amend the article related to the Right to Residency and Movement under the Part on Rights and Liberties.

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Proposed Article:

**“The State shall guarantee male and female citizens the right to unrestricted movement and transfer of properties, inside and outside the Libya”**

Grounds:

- The Article related to the right of movement limits the exercise of this right inside the Libyan territory, which is an insufficient guarantee of the freedom of movement for women, without any limitation or condition outside the territory.
- This is an extension to personal freedom and it is essentially a condition and a mechanism for the exercise of other rights and liberties such as freedom to work, the right to education and assumption of leadership positions.

### **Mandatory and Free Education for Girls**

Proposal: Amend the article related to the Right to Education under the Part on Rights and Liberties by adding the following paragraph.

Proposed Article:

**“The State shall also guarantee the right and quality of free education in accordance with international standards. It shall develop educational curricula in accordance with international human rights conventions, and shall guarantee compulsory education until secondary level or equivalent for boys and girls.”**

Grounds:

- To emphasize the standards of human rights treaties on equality, non-discrimination and other rights; and to reaffirm the mandatory secondary education for girls as well.
- Education is a mechanism that would fundamentally contribute to the elimination of stereotypes against women and discrimination against them.
- To this end, it is necessary to adopt the international standards on human rights in the educational curricula.
- Secondary education is crucial to instill in women the ability to demand their rights and participate in decision-making, as well as being a way for decent work.
- Without education and awareness of rights and power of decision-making, women will remain unable to claim their rights or to go to court.

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### Amendment of the Term “Spinsters”

Proposal: Amend the paragraph contained in the article related to the Right to Decent Life under the Part on Rights and Liberties.

Proposed text:

**“Provision of a decent life for retirees, divorced women, widows, female heads of households and women who have never married”**

Grounds:

- Amendment of the phrase in order to avoid use of a phrase that is linguistically inappropriate within the Libyan context.

## Part on Natural Resources

### Women Representation in Wealth Management Institutions

Proposal: Amend Article 2 of the Part on Natural Resources by adding the following phrases to paragraph 1.

Proposed Article:

**“Provided that the State ensures at least 45% representation of women in such institutions.”**

Grounds:

- Please see the above grounds. In addition, effective participation of women in the decision-making processes relating to the management of natural resources and distribution of revenue is a key issue to determine women needs and priorities. It is a prerequisite for development and democracy.

## General Provisions

### Non-Permissibility of Constitutional Amendments vis-à-vis Women’s Rights

Proposed amendment: Inclusion of a new article on amendment of the Constitution.

Proposed Article:

**“The Constitution shall not be amended in a manner that leads to retracting human rights guaranteed by the Constitution, in particular women’s rights. The Constitutional Court shall have**

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**the competency to ensure the extent of commitment by proposed or draft constitutional amendments in this regard.”**

Grounds:

- The theory of acquired rights and insistence on their protection.
- Special protection to a number of provisions to avoid prejudice under the cover of Constitutional amendment.

### **Neutral Language**

Proposal: Add an article to the Part on General Provisions.

Proposed Article:

**“The masculine form in the constitutional text refers to males and females alike”**

Grounds:

- This principle is essential to deny any opportunity to interpret the constitutional text in a manner that leads to the exclusion of women from the guarantees contained therein concerning the rights and liberties.
- It shall enhance the position of women.
- Contemporary constitutions adopt linguistic formulas that include both masculine and feminine forms to emphasize equality.