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**Libyan Legislation or Policies that prohibit or restrict the use of immigration detention of children and their families**;

**Preface:**

In general, Libyan legislation lack clear articles that address the issues and rights of migrant children, including the right to education and health services, and prevention from detention. All Libyan laws and decrees, that concern the child, are written without any restrictions based on residency or citizenship status. Further, Libya has ratified international conventions that guarantee the rights of the Child, regardless of citizenship and residency status. But the problem in Libya, is that authorities interpret the laws as if that they are exclusively concern Libyan children.

Ratifying International Conventions is a positive step but there is no adherence or fulfillment by the state to its international obligations.

**Decrees and National Laws on the protection of the rights of the Child**:

1. Law No. (12) of 2010, Article (27)[[1]](#endnote-1): “A person under the age of eighteen years may not engage in any kind of work. As an exception to the provision of the preceding paragraph, juveniles may be allowed to work upon completing sixteen years, provided his health, safety, and morals are maintained and provided he is employed to receive vocational education or training”.
2. The General People's Committee[[2]](#endnote-2) issued Decree No. (979)[[3]](#endnote-3) of 1993 forming “The Supreme National Committee for Family Care”, chaired by the Assistant Secretary for Women's Affairs at the Secretariat of the General People's Congress[[4]](#endnote-4). Members of this supreme committee included; the Coordinator of the Supreme Committee for Childhood, the Secretary[[5]](#endnote-5) of Health and Social Security, the Secretary of the Public Authority for Social Affairs, and three family sociology experts. The Supreme National Committee for Family Care was assigned several tasks, including drawing plans and programs necessary to care for the family, the most important of which are:
	1. Grants the powers and the authority of law enforcement officers to enforce the law on the protection of children and monitor entities and individuals who are in charge of the affairs of orphaned children, and the children reported to be victims of domestic abuse or mistreatment,
	2. To setup special juvenile courts that have jurisdiction over preventive measures for juveniles, and jurisdiction to try minors over 14 and under 18 years of age,
	3. For cases that require the detention of a minor over the age of 14, the minor must be placed in a reform school, or a designated institution or charity, or in the custody of a trustworthy guardian,
	4. The social and the general environment, in which the child was brought up and the reasons for the crime, must be investigated before a sentence is struck,
	5. The presence of a lawyer must be specified in the felony articles,
	6. The juvenile court procedures follow the prescribed procedures in felony cases,
	7. Trial proceedings are attended only by the defendant’s relatives, representatives of charitable organizations concerned with juvenile affairs, and representatives from Ministry of Justice,
	8. The verdict is issued in an open hearing, and testimonies of witnesses are heard without the presence of the defendant,
	9. All judicial announcements must be made known to the defendant’s parents or guardians, and they may resort, in the best interest of the child, to all prescribed methods of appeal,
	10. Appeals in juvenile cases must be expediated,
	11. Juvenile Court Judge supervises the implementation of the verdicts issued accused juveniles in his court,
	12. Convicted juveniles serve their sentences in a juvenile education facilities specifically established to preparing accused and convicted juveniles, caring for them, raising them, developing their talents and hobbies, and training them in various professions. These facilities are under the supervision of the Social Affairs [Authority]. The Juveniles in the facilities will be classified based on their age group (7 to 12 years), (12 to 15 years) and (15 to 18 years) categories, and
	13. Relatives are allowed to visit the juvenile once every week.
3. The measures taken by the Libyan legislature to ensure the physical and psychological recovery of children who have been subjected to torture or ill-treatment and their reintegration into society; these issues are cared for by the mental health clinics, social services and rehabilitation centers, and the social welfare institutions of the Social Security Authority, through their specialists and experts.
4. Law No. (17) of 1992 “on the Affairs of Minors and the Like”[[6]](#endnote-6) defines the Age of Adulthood and the civil rights of the child who is capable or incapable to distinguish. It also defined the appointment a custodian or guardian, and the provisions of the guardianships and custodianships over the self and the money. The selection of a guardian or a custodian may be conducted only with the permission of the court. If no special provisions in this Law are available, the most appropriate principles of Islamic law shall apply in matters of guardianship and curatorship.
5. On 29 December 1997, Law No. (5) of 1997 “on Childhood Protection”[[7]](#endnote-7) was issued, it made it compulsory to carry out medical examination before marriage to detect hereditary diseases which may affect the physical or mental health of children. Law No. (5) of 1997 confirmed some of the provisions contained in the legislation in force, such as the Criminal Procedures Law, the Social Security Law, the Civil Status Law, the Compulsory Education Law and the Labor law. A new entity was created by this law, the “Higher Committee for Children”, to supervise the implementation of the provisions of the law and monitor the institutions entrusted with the welfare of the child[[8]](#endnote-8). The Presidential Council of the Government of National Accord issued Decree[[9]](#endnote-9) (259) of 2018 “to Establish the Higher Committee for Children” to replace the one established by Law (5) of 1997.
6. Libya ratified “African Charter on the Rights and Welfare of the Child in Africa” on September 23, 2000[[10]](#endnote-10). The Charter ensures the rights of all children on the Libyan territory.

**Existing non-custodial alternatives to immigration detention of children (e.g. community-based reception solutions) and their effect on the protection of the rights of migrant children and their families**

In Libya there is no alternatives to detention for children of migrants and asylum seekers. Everyone is considered as a criminal under the domestic law[[11]](#endnote-11), this includes infants and minors, and will be placed in a detention center. There was only one initiative undertaken by the Office of the United Nations High Commissioner for Refugees (UNHCR), in partnership with the Libyan authorities, it declared the opening of the Gathering and Departure Center, which can accommodate up to 1000 people in the capital Tripoli. The place was planned to house children and women migrants until they are resettled in a third country, but UNHCR announced the closure of center after less than a year from its opening.

There are very few individual cases in which some families were allowed to host children in their homes until they are deported, and this is rarely the case.

**Good practices or measures taken to protect the human rights of migrant children and their families while their migration status is being resolved**;

Throughout the past years in Libya, and despite the presence of many international organizations and agencies working on the cases of immigration and asylum seekers, we have seen no improvement, and all failed to provide the minimum protections for migrant children.

There are no measures to reduce mixing children with adults, all detention centers under the control of the Libyan authorities, which are visited by international organizations[[12]](#endnote-12), don’t pay attention to the separation of minors from adults nor in providing them security.

Regarding migrant workers who are outside the detention centers, there are no initiatives or measures carried out by local authorities in Libya. Mostly due to that All workers are irregular workers; this means they are not registered in the municipalities. School age children cannot join schools. This is very serious violation of migrant children, because some migrant families who do not have legal status (work permit, or residence) could be working in Libya for years, with their children missing out on school.

**Challenges and/or obstacles in the development and/or implementation of non-custodial alternatives to immigration detention of children and their families;**

**Legal obstacles**: the failure of the Libyan legislature in enacting laws in line with the conventions and charters ratified by the Libyan State, for example law No. (19) of 2010 “On Combatting Illegal Immigration”[[13]](#endnote-13) criminalizes all those who entered Libya without identification papers this include infants and minors, will be placed in detention centers[[14]](#endnote-14).

**Administrative obstacles**: there is no coordination between government departments and agencies concerned with the protection of the Child and the family of migrants. Ministry of Social Affairs is the ministerium that manages welfare homes for the children and women, these social institutions can be of great benefit to help migrant women and children, especially unaccompanied children and infants. But currently, they do not take any infant, minor, or woman.

**Community obstacles**: Despite the presence of migrants in Libya since decades, still migrants in general have difficulties in integrating in the society and are facing discrimination on a daily basis.

**Political Division**: The Political Division, the presence of internationally recognized government (GNA) and a parallel self-proclaimed one in the East has weakened the performance of State agencies, which even before has no real impact of its work on the ground. This has affected the work of international organizations and led them to focus their work in the areas under the control of the internationally recognized government, thus neglecting the rest of the country.

**Absence of African role**: the majority of the migrant children in Libya are from African countries, and there is almost complete absence of efforts by the embassies and consulates in Libya to look after the welfare of their citizens in Libya. We believe that if these embassies and diplomatic missions in Libya make effort to serve their nationals stranded in Libya, especially women and children, the situation will be better.

**Other relevant information**

International organizations and agencies, which entered Libya after the February Revolution in 2011, played an important great role in changing the scene. However, we cannot be certain that this intervention and the change are necessarily positive, and that it contributed to removing obstacles and establishing proper rules to help the Libyan state to preserve and protect the right of migrant children and their families. But perhaps the most important policies and practices that has had a negative impact on the situation of migrant children, are:

1. The lack of coordination between all these international and regional organizations, which receive funding from international donors for their projects in Libya,
2. The absence of real diagnosis of the Libyan crisis and priorities of projects in Libya by the donors, in particular lack of consideration of the situation of child migrants in Libya, and
3. Many projects by international organizations are in partnership with Libyan Ministries, who often impose their policies on the organizations.

**International and regional conventions and treaties ratified by Libya**

* International conventions ratified by Libya, include the International Convention on the protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of the Child,
* The Libyan government has taken important steps in its commitment to the protection of the rights of their children. In the April 15, 1993, Libya ratified the Convention on the Rights of the Child (CRC) issued in the year 1989
In addition, Libya acceded to the optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in 2004, acceded to the optional protocol on the involvement of children in armed conflict. Also, in 2004, and in the binding declaration in accordance with article 3, the Government had ratified the Convention No. 182 of the International Labor Organization on the worst forms of child labor.
* In the regional context, Libya joined the African Charter of Human and Peoples' Rights, the African Charter on the rights and welfare of the Child, and the 1969 “OAU Convention Governing the Specific Aspects of Refugee Problems in Africa”.
1. Geneva Centre for Security Sector Governance, Libyan Security Sector Legislation: “Law No. (12) of 2010 on Labour Relations and its bylaw”, ([Original Arabic](https://security-legislation.ly/ar/node/31973)) and ([English Translation](https://security-legislation.ly/node/31973)). Arabic and English copies are attached. [↑](#endnote-ref-1)
2. The General People’s Committee the Executive Branch, the Government, during the Gaddafi rule. [↑](#endnote-ref-2)
3. Human Rights Solidarity could not find a copy of Decree (979) of 1993. However, it is referenced in a report by the OHCHR at this [link](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhssP8363FmFiDEE7t9Iskm8yZrkHfUEupf45Rx2SjAZ1546kmR9EbKjjaTWfO%2FfM%2F9LQiRFtoBfFfcsbApRmHsytPRJjDwO7EPqE4ol2f0eQH). [↑](#endnote-ref-3)
4. The General People’s Congress was the Legislative Branch, the Parliament, during the Gaddafi rule. [↑](#endnote-ref-4)
5. Secretary was equivalent to Cabinet Minister. [↑](#endnote-ref-5)
6. Ministry of Justice, Libya: “[Law No. (17) of 1992 ‘on the Affairs of Minors and the Like’](http://itcadel.gov.ly/wp-content/uploads/2016/05/law17-year1992.pdf)”. Arabic copy of the law is attached. [↑](#endnote-ref-6)
7. Geneva Centre for Security Sector Governance, Libyan Security Sector Legislation: “Law No. (5) of 1427 FBP [1997] on Childhood Protection”, ([Original Arabic](https://security-legislation.ly/ar/node/31492)) and ([English Translation](https://security-legislation.ly/node/31492)). Arabic and English copies are attached. [↑](#endnote-ref-7)
8. Law (5/1997), Article (12): “A committee called the Higher Committee for Children shall be formed. It shall prepare the plans and programs necessary to care for children, monitor the authorities concerned with the implementation of the provisions of this law, and issue the necessary instructions in this regard. The formation of the committee, its work system, and its affiliation shall be regulated by a decision issued by the General People's Committee”. [↑](#endnote-ref-8)
9. Ministry of Education, Libya: “[Presidential Council Decision of the Government of National Accord No. 159 of 2018 regarding the establishment of the Higher Committee for Childhood](https://moe.gov.ly/%D9%82%D8%B1%D8%A7%D8%B1-%D8%A7%D9%84%D9%85%D8%AC%D9%84%D8%B3-%D8%A7%D9%84%D8%B1%D8%A6%D8%A7%D8%B3%D9%8A-%D9%84%D8%AD%D9%83%D9%88%D9%85%D8%A9-%D8%A7%D9%84%D9%88%D9%81%D8%A7%D9%82-%D8%A7%D9%84%D9%88-2/)”, March 13, 2018. Arabic Copy of the Decree is attached. [↑](#endnote-ref-9)
10. African Union: “African Charter on the Rights and Welfare of the Child”, [Status List](https://au.int/sites/default/files/treaties/36804-sl-AFRICAN%20CHARTER%20ON%20THE%20RIGHTS%20AND%20WELFARE%20OF%20THE%20CHILD.pdf). [↑](#endnote-ref-10)
11. The situation of refugees, asylum-seekers and migrants alike is regulated by a series of laws broadly relating to foreigners in the country. Of particular importance in the context of the flow of people who use Libya both as a destination and a transit country is Law 6 of 1987 on the organization of entry, residence and exit of foreigners in Libya and amendments to this law as laid out in Law 2 of 1372 (2004). The law stipulates that foreigners must have a valid visa to enter, reside in and leave Libya. Those who violate the provisions of this law (Article 19 after 2004 amendment) – for example, by not obtaining the correct visa, violating the conditions of their visa or overstaying the duration of the visa – are liable to a prison sentence without fixed duration and a minimum fine of 1,000 Libyan Dinars. The 2004 amendments make specific reference to activities relating to irregular migration, notably smuggling migrants by any means, and creating, supplying or carrying false travel or identification documents. These activities are punishable by a minimum one year’s imprisonment and a fine of no less than 1,000 Libyan Dinars (Article 19 bis). The 2004 amendments to the Law 6 of 1987 have introduced tighter penalties on illegal residence in and passage through Libya as well as penalties for smuggling. Law No. (19) of 2010 gave foreigners illegally residing in Libya to settle their status within a period not exceeding two months from the enactment of the law, which means that all foreigners residing currently in Libya without a permit or valid visa are considered illegal immigrants. Arabic and English copies of Law No. (6) of 1987, Law No. (2) of 2004, and Law (19) of 2010 are attached. [↑](#endnote-ref-11)
12. International Organizations visits to official detention centers mainly for providing health services, psychological support and voluntary return. [↑](#endnote-ref-12)
13. Geneva Centre for Security Sector Governance, Libyan Security Sector Legislation: “Law No. (19) of 2010 “On Combatting Illegal Immigration”, ([Original Arabic](https://security-legislation.ly/ar/node/32174)) and ([English Translation](https://security-legislation.ly/node/32174)). Arabic and English copies are attached. [↑](#endnote-ref-13)
14. Law (19) of 2010, Article (6): “Foreign illegal immigrants shall be penalized by detention with hard labour or by a fine not exceeding 1,000 LYD. In all cases, a foreigner convicted of any of the crimes set forth in this law shall be expelled from the territory of the Great Jamahiriya immediately upon execution of the sentence”. [↑](#endnote-ref-14)