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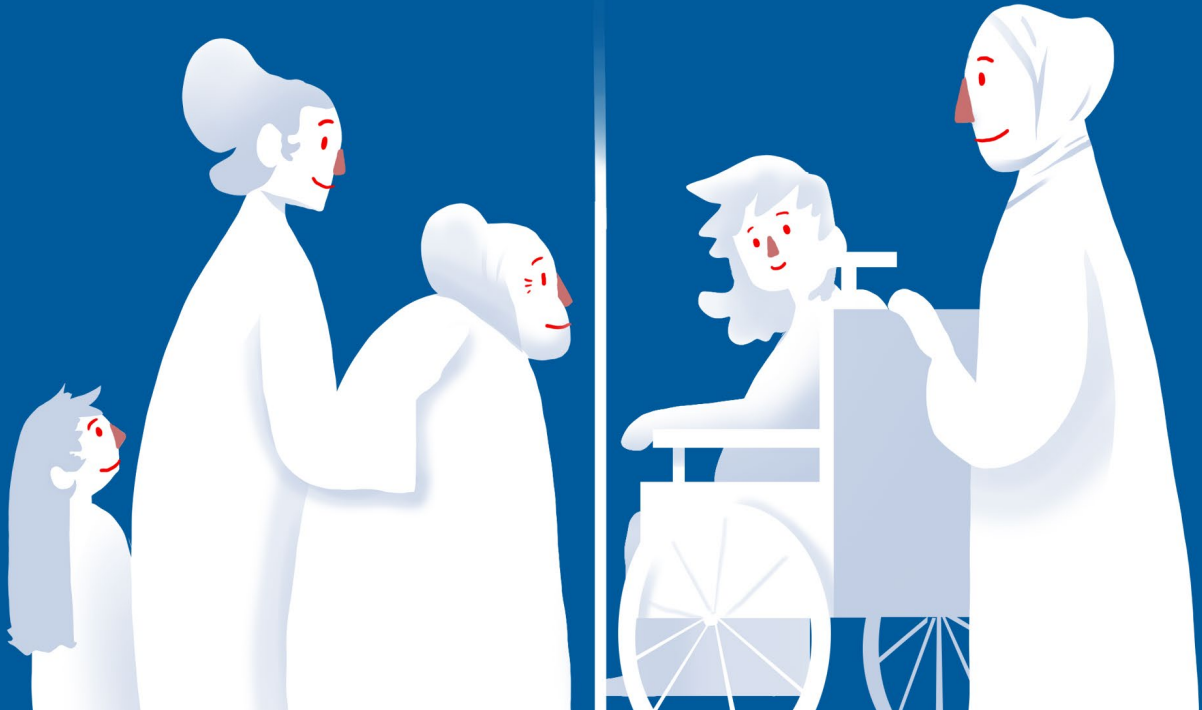
مؤسسة فريدريش ايبرت



# Social Security Laws

in Libya

A Gender-Based Perspective



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# **Social Security Laws**

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## **A Gender-Based Perspective**

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## Introduction

When it first emerged as a framework for social systems, the idea of social security and social protection was based on the principle of solidarity and cooperation in enduring the burdens and perils faced by people in their lives, their livelihoods, and their health. From illness and disability to aging, unemployment, or the death of a breadwinner, humanity has long searched for means to ease the difficulties of life, including by saving earnings or seeking the assistance of those better-off.<sup>(1)</sup> With the Industrial Revolution, and the increase in the number of factory workers, there was a search for mechanisms to cope with the increasing risks to which workers were exposed. States intervened through legislation to provide protection for them, though integrated mechanisms for social security were not implemented until the mid-20th century.

Development in international social security policy has pushed towards the inclusion of protection in the 1944 Declaration of Philadelphia, which stressed the need to free workers from fear and want. This was followed in 1948 by the Universal Declaration of Human Rights, adopted by the United Nations General Assembly, which called for the establishment of social security systems as a form of respecting human rights.<sup>(2)</sup>

In Arab countries, social security emerged after independence as a result of the adoption of new reformist populist discourse by nascent regimes. These regimes hastened to pass laws to ensure social security had evolved in order to cope with the political, economic and social changes prevalent at the time. These laws have generally provided a form of care for all individuals from all social and demographic groups.<sup>(3)</sup>

Social security laws have targeted women as beneficiaries, and sought to consolidate safety nets for women, especially after their increased labor participation. However, there were deficiencies and forms of discrimination that prevented maximal or actual protection in most of these contexts. For this reason, this study seeks to examine women's realities in the legal system of Libyan social security, in order to see how the law organized all aspects of social protection for women; recognize areas of discrimination; and propose changes necessary to secure that umbrella protection extends to women in the workplace and outside of it.

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1. Firas Milhem, The Legal Framework of Social Security in Palestine, law revision series project, p. 8.

2. The Universal Declaration of Human Rights of 1948, link: [https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf)

3. Idris Mohammed Ali Ghenawy, "Ramifications of Ideological Trends of the Libyan Political Regime on Social Security Policies Between 1951-1999" (Arabic), unpublished Master's thesis, Benghazi University, Faculty of Economics, 2001, p. 83.

## Study methodology

This study was based on a legal approach, and a descriptive analytical method was adopted. Personal interviews with specialists were the primary means of data collection.

### 1. Definition of social security

Social security is defined as any social protection program provided for in legislation, or any other enforced arrangement which provides individuals with a degree of income security when facing emergency situations related to aging, disability, or unemployment, and provides access to curative or preventive medical care.<sup>(4)</sup>

Some texts define social security as “the legal rules governing the protection of individuals from social risk that prevents them, in whole or in part, from exercising professional activity and earning an income”. Social security also applies to situations of increased financial burdens or declining standards of living, and it guarantees a minimum standard of dignified living, by mechanisms determined in legislative texts.<sup>(5)</sup>

Social security includes social insurance programs, social assistance programs, mutual benefit programs, and national savings funds, among other arrangements that vary according to the law or national practice of each country.<sup>(6)</sup> Among the programs most common across the world are retirement pensions and disability benefits, followed by workplace injury benefits and unemployment programs.<sup>(7)</sup>

Libyan legislation defines social security as “a right guaranteed by society to all citizens and non-citizens who reside in [Libya], which includes every system with measures taken, in accordance with this legislation, to protect individuals in old age, sickness, disability, workplace injury and occupational diseases, or in cases of loss of

breadwinners or loss of livelihood, and cases of pregnancy and childbirth; as well as subsidies for families in cases of disaster, emergency, or death. It also includes social care for those without caretakers, such as children and adolescents, the disabled, and the elderly, and guidance for juveniles in cases of felony or delinquency”.<sup>(8)</sup>

### 2. Social security systems

Social security systems have witnessed remarkable development due to political, economic, and social transformations. The concept was crystallized in the 1930s for the purpose of tackling the problems faced by the working class. In this context, the following models may be cited:<sup>(9)</sup>

#### I. Temporary/alleviative model

This model for social security is based on a set of foundations, the most significant of which are:

- Reducing state interference in people’s personal affairs and neglecting the consequences of class struggle. Limited intervention is due in cases where conflict reaches a level that threatens and disturbs the balance and security in society.
- Emphasis on individual responsibility in facing the requirements of life, which renders voluntary association the best possible appropriate system of organization to provide care and solve community problems.

This model has been adopted by advocates of capitalist economic system, and those who reject state interventions, for a number of reasons, most notably:<sup>(10)</sup>

- Such intervention to provide free services to all the population will create an unrealistic demand for goods and services. Due to the lack of resources, the state will fail to meet the demand of the population, which would

4. ISSA, “Social security: a fundamental human right,” International Social Security Association, link: <https://www1.issa.int/Understanding%20social%20security>

5. Hussein Abdellatif Hamdan, Provisions of Social Security, El Dar El Gamaya Publishing, 1990, p. 24.

6,7. Ibid.

8. Social Security Law No.13 of 1980 (Arabic), link: <https://security-legislation.ly/ar/node/31645>

9. Ali Omar al-Mistrati, Legal System of Social Protection in Libyan Legislation: A Case Study of Disability, Garyounis University, Faculty of Law 1998-1999, an unpublished Master’s thesis, pp. 76-77.

10. Ibid.



disrupt the economic balance due to the inability to distinguish between real and artificial demand for goods and services, leading to the squandering of public resources.

- Planning and intervention means, in many cases, the centralization of decision-making in the hands of government, rather than its distribution, which increases the likelihood that unsound decisions are made, affecting the lives of millions of people.

This model embodies the value of freedom and calls for the development of people's abilities and sense of innovation, while rejecting the idea of government intervention. However, in countries that have adopted this model, the result of applying these values to the organization of social affairs has been inequity and inequality, prompting states to adopt government intervention to support social services.

## II. The institutional model

This model views social policies as normal basic functions of modern industrial society that promote a balance between the prevailing values in Western societies, represented by individualism or the free market, and those that concern collective security, social justice, and citizens' rights, including the right to welfare and basic care. This model has a number of features, the most prominent of which are:<sup>(11)</sup>

- The increased responsibility of the state for the provision of social services, thus reducing the importance of the role of mutual aid provided by individuals; diminishing the role of voluntary community-based associations; and increasing individualism, specialization, and division of labor.
- The broadening of categories of beneficiaries to state services, and their expansion beyond those in need to include those with limited incomes, workers, the youth, and members of trade unions.

- The provision of services and care is based on the principle of citizenship, which guarantees these services as a social right provided by the state to individuals according to specified conditions.

The practical applications of this model have varied greatly, especially in Western societies, before the following elements from it reached developing countries:<sup>(12)</sup>

**1. The active welfare state:** In this model, the government, along with business owners, intervenes to provide welfare for the workforce. It seeks to ensure citizens' rights and protect against economic fluctuations and their social impact, while also ensuring income and addressing unemployment, injury and disability benefits, and other compensations and pensions.

**2. The social programs state:** This is based on securing income for the poor and expanding social security programs to include all of society, not only the workforce. It considers the social needs of individuals as legitimate rights for every citizen, based on the principle of equal opportunity. In this model, a state may seek the assistance of voluntary initiatives, or encourage communal and individual action to improve the conditions of individuals and families.

**3. The social security state:** This model is based on the principles of solidarity, equality, and equal opportunity. It does not merely ensure a minimal level of assistance to citizens but goes beyond that towards achieving an adequate standard of living for every citizen. Social policies in this model include many social programs, including social security programs, maternal and child healthcare, and general assistance for all residents of society without discrimination, as services become available to members of society regardless of market forces.<sup>(13)</sup>

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11. Ibid., pp. 80-81.

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12. Ibid.

13. Ibid., p. 81.

## II. The socialist model (social welfare)

This model of public welfare is based on a fundamental rule, a central social value, of redistribution to each according to their need. In this model, production, distribution, and consumption revolve around this fundamental principle. This means that social services are not merely a convenient way to meet needs, but rather a realistic application of the value of social solidarity. It aims not only to build superior systems for social welfare; instead the socialist society itself becomes one of welfare, or one that has transcended class discrimination. The features of socialist welfare systems may be delineated as follows:<sup>(14)</sup>

- The state's overall responsibility to meet needs.
- Distribution according to need, as the latter is the central value and the baseline for redistribution.
- The marginal role of NGOs in providing social welfare.
- The comprehensiveness of welfare to cover all individuals in various social segments and groups, within a framework of justice and social equality.

Here, it may be noted that there are disparities in the development and organization of social policy in capitalist societies, compared to developing countries. These differences are the disparities in the conditions of the working class; histories of class warfare; roles of the state in provision; as well as the prevailing ideology in each society. The unique historical circumstances, and the different economic and social structures of developing countries have also impacted the organization of social policy, its orientation, and the role played by each of its institutions, especially in the post-independence period. As national liberation movements emerged and were endorsed by elites in culture, the military and the bureaucracy, reformist ideologies were promoted that later seized power and proceeded to adopt reforms that have taken a similar trend to social welfare states. This enabled social

welfare policy to find great acceptability among political and social leaders, and it found popular legitimacy among the citizenry.<sup>(15)</sup>

## 3. The international system regulating social protection rights

Social security systems have witnessed remarkable development due to political, economic, and social transformations. The concept was crystallized in the 1930s for the purpose of tackling the problems faced by the working class. In this context, the following models may be cited:

### 3.1 International treaties and covenants:

The importance of the various forms of social protection has been emphasized by many international treaties and agreements that have been signed and ratified by many countries, such that this protection is enshrined in their domestic laws. From this international umbrella, we highlight the following:

#### a. The Universal Declaration of Human Rights of 1948

Article 22 of the Declaration acknowledges the right of each individual to social security, stating that, "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social, and cultural rights indispensable for his dignity and the free development of his personality".<sup>(16)</sup> Article 25 also refers to the rights of individuals to social protection in situations beyond one's control, such as unemployment, illness, disability, loss of breadwinner, old age, or other circumstances which could strip people of their livelihoods.<sup>(17)</sup>

While the Universal Declaration of Human Rights is not legally binding, what it embodies with regard to the right to social security has served as the basis for international treaties later signed.

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14. Ibid., p. 82.

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15. Ibid.

16. The Universal Declaration of Human Rights.

17. Ibid.

## b. International Covenant on Economic, Social, and Cultural Rights of 1966

Article 9 of the Covenant recognizes the right to social security. Article 10-2 recognizes the right of working mothers to all the benefits of social security, while Article 10-3 also obliges states to take especial measures to protect and help children and adolescents.

The Committee on Economic, Social, and Cultural Rights (CESCR) has also called upon states parties to the Covenant to include information in their submitted reports on the nine branches of social security contained in the Convention (102) of the International Labor Organization,<sup>(18)</sup> which may seem to exclude the right to basic welfare to meet fundamental life needs. However, some experts believe it is possible to derive this right from Article 11 of the Covenant, which recognizes for each person the “right to an adequate standard of living including basic income, food, housing, water, sanitation and clothing, and the continuous improvement of living conditions”.<sup>(19)</sup>

## c. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979

Article (11- E1) obliges all states parties to the Convention to take all appropriate measures to eliminate discrimination against women in the workplace, in order to ensure the right to social security based on gender equality, particularly in retirement, unemployment, sickness, disability, old age, and any form of inability to work, as well as the right to paid leave.

Furthermore, states parties are obliged to take appropriate measures to introduce a system of paid maternity leave, or accompanied by similar social benefits without the risk of losing employment due to pregnancy or maternity leave, or facing

discrimination on the basis of marital status. The Convention also calls for imposing sanctions on offenders (Article 11- B2). The responsibilities of state parties are recognized as follows:<sup>(20)</sup>

- Eliminating discrimination against women in rural areas.
- More direct utility from social security programs.
- Access to adequate healthcare facilities, including the provision of information, counseling, and services related to family planning.

## d. International Convention on the Elimination on All Forms of Racial Discrimination of 1969

Under this agreement, states parties pledged to prohibit and eliminate racial discrimination in all its forms, and to guarantee the right of everyone, regardless of race, colour, or national or ethnic origin, to equality before the law, especially in public health services, medical care, social security, and social services (Article 5 E4).<sup>(21)</sup>

## e. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990

The Convention has directly addressed the subject of social security rights of migrant workers and their families<sup>(22)</sup> as it recognizes their entitlement to the same treatment in the country of work as nationals, as per the fulfilled conditions stipulated by the prevailing legislation in that country as well as applied bilateral and multilateral treaties. The relevant authorities in the country of origin, and those in the country of employment, can undertake the necessary arrangements to determine the means of applying this rule. In cases where adopted legislation does not grant benefits to migrant workers and members of

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18. The nine branches of social security are medical care, unemployment, survivors' benefits, disability, maternity family, employment injury, sickness, old age, work accidents and occupational illness. See: ILO, Social Protection in Lebanon: From a System of Privileges to a System of Rights, International Labor Organization, link: <http://www.annd.org/english/itemId.php?itemId=668>

19. International Covenant on Economic, Social and Cultural Rights of 1966, link: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

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20. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979, link: <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

21. International Convention on the Elimination on All Forms of Racial Discrimination of 1969, link: <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

22. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990, link: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>

their families, the relevant states parties can, through bilateral or multilateral agreements, arrange for pay contributions for nationals in similar circumstances in each state.

#### f. European Social Charter of 1965

Article 12 of the Charter obligates states parties to establish a social security system and maintain it at least at required levels, and to ratify Convention No. 102 of the International Labour Organisation on the minimum standards for social security. This article mandates concerned states to steadily increase their level of social security. It also puts provisions for states parties with regard to the steps necessary to ensure equality in treatment of nationals, and citizens of other states parties in respect to social security rights.

Article 13 of the Charter also acknowledges the right to social and medical aid, as it includes in its first paragraph a pledge by states parties to ensure that people receive aid and treatment in one way or another, if they are unable to bear the cost on their own.<sup>(23)</sup>

### 3.2 The regional system of social security legislation:

#### a. The Protocol on the Rights of Women in Africa; annex to the African Charter on Human and Peoples' Rights of 2003<sup>(24)</sup>

Article 13-D of the Protocol relating to economic rights and the right to social welfare states the need to establish systems of protection and social security for women working in informal sectors. It also calls for raising awareness about the need to adhere to this system of social security, and ensuring the rights of older women (M-22) and those with disabilities (M-23).

At the level of the Arab region, social security was a priority. At its 21st session on 29 November, 2005, the Arab Justice Ministers Council approved

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23. European Social Charter of 1961, link: <https://rm.coe.int/168006b642>.

24. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, annex, 2003, link: [https://www.un.org/en/africa/osaa/pdf/au/protocol\\_rights\\_women\\_africa\\_2003.pdf](https://www.un.org/en/africa/osaa/pdf/au/protocol_rights_women_africa_2003.pdf)

the Arab guidance document on social security for workers in the Arab region, which dealt in detail with due protection in cases of injury at work. A number of agreements were also implemented that were considered foundational for social security in the Arab region, most notably the Arab Agreement No. 6 of 1976 on levels of employment; maternity protection No. 3 of 1971, which dealt with the minimum conditions of social protection; and No. 24 of 1981 on the rights of the Arab worker.<sup>(25)</sup>

#### b. Convention No. 5 of 1976 on working women in the Arab Labor Organization

The Convention stresses the rights of working women to social security. Article 16 states that, "A working woman has the right to combine her salary or pension and her husband's without a maximum limit, and her husband has the right to combine his salary or pension with his wife's without a maximum limit. The children of working women have the right to combine pensions from their fathers and mothers without a maximum limit".<sup>(26)</sup>

#### b. Convention No. 5 of 1976 on working women in the Arab Labor Organization

The Convention stresses the rights of working women to social security. Article 16 states that, "A working woman has the right to combine her salary or pension and her husband's without a maximum limit, and her husband has the right to combine his salary or pension with his wife's without a maximum limit. The children of working women have the right to combine pensions from their fathers and mothers without a maximum limit".<sup>(26)</sup>

#### c. Arab Document for Women's Rights of 2019<sup>(27)</sup>

Article 22 of the document emphasizes the necessity of taking measures to guarantee the

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25. ATUC, "What are Categories of Women That Were Excluded from Social Security Laws in the Arab Region" (Arabic), Arab Trade Union Confederation, link: <https://bit.ly/2Q6sQPU>

26. Arab Agreement No. 6 for 1976 (Arabic), Arab Labor Organization, link: <https://alolabor.org/16334/>

27. 24.ae, "Here Are the 25 Articles of the Arab Document for Women's Rights" (Arabic), link: <https://24.ae/article/529500/25->

right to social security, housing, and a decent life to widowed, divorced, and abandoned women. Article 19 stipulates special measures for women with disabilities in order to enable their access to decent treatment and to ensure their right to participate in public life and be integrated into the institutions of society. Moreover, it demands the provision of appropriate opportunities for education, vocational training, and employment commensurate with economic, social, and health needs.

This document points to the necessity of adopting protection measures for elderly women to meet their social and economic needs, and to ensure access to a dignified life (Article 20). It also stresses the need to take special measures to ensure free health services for women during pregnancy, childbirth, and early maternity (Article 18).

Libya is among the countries that have signed and ratified many of these treaties and agreements related to social security, including:<sup>(28)</sup>

1. Convention 102 of 1952 on social security (minimum standards).
2. Convention 103 of 1952 on maternity protections.
3. Convention 118 of 1962 on equality in treatment between nationals and non-nationals in regards to social security.
4. Convention 128 of 1967 on disability benefits, old age, and death.
5. Convention 130 of 1969 on healthcare and illness benefits.
6. Convention 138 of 1973 on the minimum age for consent and compliance.

#### 4. National social security policy in Libya, 1951-2019

When tracking the development of social security systems around the world, an element that can be noted is how they are affected by the social, economic and political contexts and experiences in each country. The same applies to Libya, where these dynamics affecting the evolution of the political system have had a direct impact on the development of legislation and laws that address social protections.

The genesis of these systems precedes independence, as early forms of social insurance emerged in the first half of the 20th century under the Italian mandate. Italy established three social insurance institutions in Libya that worked in specific jurisdictions that corresponded with Italy's colonial projects, and included most of the coastal areas and cities, as follows:<sup>(29)</sup>

- The Libyan branch of the National Insurance Corporation against work incidents, which provided insurance against the risk of work injury, and medical treatment only in the case of such injuries. It also provided monetary compensation to foreign workers as well as Libyans, albeit a small number of the latter.
- The Libyan branch of the National Institution of Social Insurance, which provided protection to workers against the risks of disability, old age, death, and unemployment. Notably, all insured persons in this mechanism were foreign workers, as it excluded Libyans.
- The Libyan branch of the Italian-African Social Assistance Foundation. This branch undertook cash provisions and in-kind assistance in the event of illness or childbirth, and its beneficiaries only included Italian citizens.

It may be noted that, while these three institutions were established in Libya, their primary purpose was to protect Italian and other foreign settlers. Libyan workers received a small share of these social protections, if any.

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28. SSF, Security Agreements (Arabic), Libyan Social Security Fund, link: [https://ssf.gov.ly/?page\\_id=6375](https://ssf.gov.ly/?page_id=6375)

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29. Ibid.

After the declaration of Libyan independence on 24 December, 1951, and despite poor economic conditions and high levels of poverty in the country, there was clear interest in promoting the principles of justice and equality and the state's commitment to providing decent standards of living. The preamble to the 1951 constitution stipulates the responsibility of the state to "safeguard domestic tranquility... secure the establishment of justice; guarantee the principles of liberty, equality, and fraternity; and promote economic and social progress and the general welfare."<sup>(30)</sup> The chapter on the people's rights refers to the rights of workers to fair wages (M-34). "This obliges the state to provide a decent standard of living to all Libyans (M-35)." Moreover, it emphasizes equality among Libyans in the eyes of the law in terms of rights and duties, and prohibits discrimination based on religion, sect, language, or wealth.

<sup>(31)</sup> Italian social insurance institutions continued to exist until the UN issued a recommendation, addressed to both Libya and Italy, for both sides to reach special agreements on the transfer of Italian social insurance commitments, public and private, as well as the transfer of an appropriate portion of the funds of these institutions to their Libyan counterparts.<sup>(32)</sup>

The International Labor Organization dispatched experts to Libya to develop a national social insurance programme that was implemented in 1959, and aimed to protect employees in cases of illness, work injury, childbirth, inability to work, old age and unemployment.<sup>(33)</sup> This prompted the issuance of Social Insurance Law No. 53 of 1957, as Italy incorporated the aforementioned insurance institutions into the National Institution of Social Insurance in Libya.

After decades of Libyans' exclusion, this law provided coverage and protection to all wage workers regardless of nationality and level of income. It also ensured maternal protections,

retirement pensions, and compensation for deaths due to work injury, while previous laws only provided cash assistance in one installment as compensation for disability and death caused by such work-related injuries. The law also provides pensions for widows and orphans who lose breadwinners or caretakers; categories that were previously uncovered.<sup>(34)</sup>

Overall, the Libyan system saw the easing of conditions for pensions and benefits, and the subscription time also decreased, leading to increases in the amounts of due pensions and lower rates of contributions to these funds compared to previous regimes. On the whole, the number of beneficiaries from social insurance services doubled.

In addition to the social security system, Libya has known pension and social aid systems, and has moved towards social security in its modern concept through development in these systems. The Social Insurance Law No. 53 of 1957 has been amended twice in order to meet the quality of insurance services, and expand horizontally and vertically; thus was the first amendment in the issuance of Law No. 1 of 1962, and Law No. 14 concerning retirement of public servants of 1967.<sup>(35)</sup>

In 1968, the Libyan Association for righteousness and social aid was established, to provide aid to people in need, it was supported by the state in 1971 by allocating the increased price of imported cigarettes, and assigned to care for sick families and prisoners, as well as to provide help in disasters and provide social aid, in cash or in kind, to the poor, the needy, the elderly, widows, and sick orphans.<sup>(36)</sup>

After the overthrow of the monarchy in 1969, no change occurred with regard to commitment to social justice values by the new regime. The Constitutional Declaration included a set of principles that reflected the philosophy of a socialist

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30. Constitution of the Kingdom of Libya of 1951, link: <https://www.temehu.com/NTC/kingdom-of-libya-constitution-english-1951.pdf>

31. Ibid.

32. Social Security Fund, Security Agreements.

33. Ghenawy, Ramifications of Ideological Trends, pp. 162-170.

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34. Ibid.

35. The Kingdom of Libya, the second five-year plan of 1969-1974, the Ministry of Planning and Development, page 289.

36. Ibid., pp. 290-291.

system, such as commitment to the application of social justice, which prohibits exploitation, also placing the national economy and public life under comprehensive planning. Health, social, and education care were considered rights, provided by the state to establish hospitals and medical and educational centers.<sup>(37)</sup>

These principles manifested in the regime's development plans, which reflected a set of goals, the most important of which were:<sup>(38)</sup>

- Achieving social justice and providing variable services at a level that prepares citizens at all levels for social change.
- Providing protection and care for special groups of disabled people to rehabilitate them.
- Encouraging self-help efforts and volunteering in social welfare fields.
- Focusing on training, developing, and providing trainers and specialists for workers in the fields of development and social welfare.

It was natural for the socialist system's orientation to be translated into binding legal articles, which were a continuation of the principles of Law 53 of 1957 for social insurance, since Law 72 of 1973 resulted in the unification of the administration authority. Before this law was issued, there were several administrative authorities responsible for social security, such as the Retirement Directorate, handling public servants, and the Directorate of Righteousness and Social Aid to help the poor and the elderly, and the Directorate of Social Insurance to care for workers. This law then integrated these administrative bodies into the General Authority for Social Security, to implement the provisions of law and administration of social security affairs in Libyan society.<sup>(39)</sup>

A subsequent development has been the issuance of No.13 of 1980 on social security as a more comprehensive substitute to law No.72, whereby

it expanded security to include all citizens and residents, workers or self-employed.

The law established a social security fund (Article 6) affiliated with the Social Security Trust, which has legal personhood and a separate budget to oversee social security services. The process of social protection from risk is carried out by registering all employers in the social security system and all employees within the same system while granting them registration cards. Contributions are deducted from salaries every month and deposited in cash or certified bonds in the Social Security Fund, so that, upon reaching the legal age, death, or disability, pensions are granted in accordance with the legal requirements.

According to Article 7 of Law No.13 of 1980, the Social Security Fund's revenues comprise the following:<sup>(40)</sup>

1. The insurance contributions, covered by the insured, employers, productive facilities, and the public treasury.
2. The sum of the additional taxes and fees imposed for social security, imposed by the mandate of the General People's Committee.
3. Funds allocated from the general annual state budget to cover benefits and the Fund's deficit.
4. Funds from budgets for the projects with which the Fund is concerned.
5. Revenues from the Fund's investments.
6. Revenues from Zakat.
7. Donations, bequests, and endowments for the Fund
8. Other funding sources.

The Fund owns all entrusted credit, rights, assets, and property transferred from the General Authority for Social Security. All current funds and reserves for retirement and social insurance systems shall also be transferred to the Fund. Military retirement funds shall be in a separate account within the Fund.<sup>(41)</sup>

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37. The Constitutional Declaration, link: <https://security-legislation.ly/ar/node/31470>

38. Ghenawy, Ramifications of Ideological Trends, pp. 230-233.

39. Ibid., pp. 268-284.

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40. Law No.13 of 1980 on Social Security.

41. Ibid.

In addition, special budgets for the transformation of the social security sector are allocated through the various ministries that have successively implemented its policies in the context of the transformation phase, in order to advance its obligations (Table 1).

**Table 1 - Transfer budget allocations for the social security sector 1970-1985\***

Year	Value of the allowance (in millions)
1970	3.2
1971	5.1
1972	8.2
1973	4.7
1974	11.3
1975	6.9
1976	4.5
1977	4.3
1978	6.2
1979	2.0
1980	7.8
1981	18.6
1982	18.6
1983	14.3
1984	6.7
1985	3.7
1986	5.4
1987	5.2
1988	6
1989	3.1
1990	2.0
1991	5.5
1992	5
1993	5
1994	5
1995	0.3
1996	0.5
<b>Total</b>	<b>64.8</b>

\* Source: Idris Muhammad Ali Ghenawy, "Ramifications of the Ideological Trends of the Libyan Political Regime on Social Security Policy between 1951-1999, unpublished Master's thesis, University of Benghazi, Faculty of Economics, 2001, pp. 286-287

## 5. Structural changes for social security institutions

The tasks of the Social Security Administration and the implementation of its policies were entrusted to a number of ministries during the structural development phase of the political system in Libya. In the beginning, the General Authority for Social Security was established under Law No. 72 to supervise the social and security salaries. This body was then cancelled by decree No. 2 of 1979 of the General People's Conference Trust, and basic pension services were referred to the General People's Authority for Social Security and municipal social security committees at that time.

In 1986, the General People's Committee for Social Security was abolished by Resolution No. 166, distributing the powers of the Social Security Trust (Ministry) among the following trusts:<sup>(42)</sup>

1. The General Service Trust, in relation to industrial and labour safety.
2. The Health Trust, with regard to medical examination and first aid in production units.
3. The Educational Trust, in relation to intermediate institutes affiliated with social service.
4. The People's Committee for Social Security in the municipalities, through its supervision of social security centers, which are responsible for providing social and disability care and various social security services.

In 1988, the Social Security Fund was restructured under Resolution 881, issued by the General People's Committee regarding the restructuring of the Fund, thus becoming affiliated with the General People's Committee (Council of Ministers). Its tasks were defined as follows.<sup>(43)</sup>

- Implement the Social Security Law and its related regulations.
- Conduct studies and prepare proposals for the rules of social security systems.

42. Ghenawy, Ramifications of Ideological Trends, pp. 240-267.

43. Ibid., p. 257.



- Develop plans for protection and social welfare, and follow up on their implementation.
- Care for the disabled, prepare the necessary social protection programs, and supervise the National Committee for the Disabled.
- Invest in social security funds and monitor the coverage of social security expenses.

The General People's Committee for Social Security was reconstituted on 22 November 1990, and the fund was made subject to the supervision of the General People's Committee for Social Security. In 1992, in accordance with Resolution No. 875 of the General People's Committee, both the health and social security trusts were merged into a single entity called the General People's Trust for Health and Social Security. The Social Security Fund became directed by the minister.<sup>(44)</sup>

The year 1994 also witnessed the organization of the Health and Social Security Trust under Resolution No. 287, issued by the trust of the General People's Committee. Supervision roles for the Social Security Fund were then transferred from the minister to the general secretary of the ministry. With the issuance of Law No. 20 of 1998 regarding the Social Welfare Fund, a number of the Social Security Fund's powers were given to the Social Welfare Fund, particularly with regard to social welfare, in order to develop a system of social solidarity and guarantee comprehensive care for those in desperate need of livelihoods; those who lost social aid; victims of natural disasters; and those without caretakers (children, boys, girls, the elderly, juveniles, and women). This was in addition to helping basic pensioners and their equivalents, large and needy families, and those with limited incomes, to help them endure family burdens.<sup>(45)</sup>

It may appear strange that Libyan legislation issued this law, since previous laws relating to social security were broader and more comprehensive. This was due to previous laws being based on unifying the social security

benefits in a single system, while Law No. 20 on social welfare (which established the Social Security Fund) was limited to providing services for certain segments of society, defined by law through Article 2 below:<sup>(46)</sup>

1. Those with no caretakers in society.
2. Basic pensioners are among the groups specified in Article 7 of the Basic Pensions Law<sup>(47)</sup>
3. The handicapped.
4. Large poor families.
5. Those whose retirement pension is insufficient.
6. Those eligible for lump-sum grants.
7. Victims of natural disasters and calamities.
8. The Zakat revenues that are allocated to the fund.
9. Unconditional donations by individuals or legal public bodies, associations, and organizations.

The Fund aims to achieve the following goals:<sup>(48)</sup>

- Direct supervision and planning in areas of social security investment, projects, and channels.
- Performing the functions and works mentioned in the spirit of the Social Security Law, from providing financial pensions, aid and subsidies, grants and providing social welfare services for the disabled, who are covered by social security.
- Conducting social studies and research, preparing proposals for social security rules and regulations, collecting solidarity participation, providing solidarity benefits, and managing and investing the Fund's resources.
- Following up on the implementation of decisions and instructions related to the implementation of the social security system.
- Carrying out procedures and arrangements for implementing the benefit services mentioned under the Social Security Law.

44. Ibid., pp. 259-261.

45. Ibid., pp. 260-261.

46. Law No. 20 of 1998 on the Social Welfare Fund link: <https://security-legislation.ly/ar/node/32196>

47. The elderly, widows, orphans and those desperate for income.

48. Social Security Fund, link: [http://tadamon.gov.ly/site/?page\\_id=38](http://tadamon.gov.ly/site/?page_id=38)

After the change in political regime in 2011, there has been no radical shift in the mechanism of the Social Security Funds, even if the deteriorating economic and social conditions due to political and institutional divides have evident impact on

the growing number of beneficiaries of the Social Security Fund hailing from many demographic groups, especially women. This has imposed significant financial obligations (Table 2).

**Table 2 - Beneficiaries of social security for the city of Benghazi and its suburbs, 2018-2020\***

	Type of pension	2018	2019									2020			
		12-9	1	2	3	4	5	6	7-8	9	10-12	1	2	3	4
1	Elderly	752	706	706	683	662	680	850	833	832	832	838	887	908	796
2	The extremely mentally disabled	79	77	77	74	69	74	86	82	81	81	76	66	89	72
3	Handicapped	12	12	12	12	11	11	14	14	14	14	13	12	12	10
4	Hospitalized	0	0	0	0	0	0	0	0	2	0	0	0	0	0
5	Amputees	2	2	2	2	2	2	8	2	8	2	2	2	2	2
6	Blind	8	7	7	5	6	7	605	8	572	8	8	7	7	7
7	Chronic diseases	570	516	516	492	459	469	4656	578	4552	572	580	598	596	478
8	Disabled minors	4481	4191	4191	4034	3694	3789	7435	4576	7148	4552	4512	4786	4719	4019
9	Disabled adults	7104	6508	6508	6179	5839	5963	162	7189	7148	7148	7058	7524	7580	7137
10	Twins	342	178	178	224	147	171	332	188	210	227	213	249	237	303
11	Widows younger than 45	270	246	246	238	227	235	1870	325	324	324	336	353	364	241
12	Widows older than 45	1740	1593	1593	1561	1455	1505	162	1803	1790	1790	1799	1910	1946	1822
13	Orphans	628	589	589	573	537	550	332	617	610	610	599	631	638	591
14	Sponsored orphans	188	171	171	167	160	159	1870	198	197	197	196	206	202	176
15	Minor children	3	2	2	3	3	3	4	4	4	4	2	3	3	2
16	Families of the disappeared	6	4	4	4	5	4	8	7	7	7	6	6	5	1
17	Families of detainees or prisoners	13	12	12	12	13	13	15	15	15	15	12	13	14	10
18	Families of the hospitalized	0	0	0	0	0	0	0	0	0	0	0	0	0	0
19	Maternal divorcees	1980	1800	1800	1756	1650	1668	2066	2008	1990	1990	1972	2110	2145	1926
20	Non-maternal divorcees	1469	1334	1334	1269	1167	1202	1550	1519	1517	1517	1511	1595	1616	1514
21	Women divorced from foreigners	15	13	13	13	14	12	15	14	14	14	14	15	17	16
22	Unmarried mothers	2	1	1	1	1	1	3	3	3	3	3	3	3	3
<b>Total</b>		<b>19664</b>	<b>19683</b>	<b>17962</b>	<b>17302</b>	<b>16118</b>	<b>16518</b>	<b>20516</b>	<b>19983</b>	<b>19890</b>	<b>19907</b>	<b>19750</b>	<b>20996</b>	<b>21103</b>	<b>19126</b>

\* Source: Social Security Fund, Benghazi 2019.

Retirees' contributions from different groups in the Social Security Fund have also multiplied. In 2019, they reached a total of 2,502 institutions, and 27,660 self-employed workers (Table 3).

**Table 3 - Retirement contributions to the Social Security Fund in public and private sectors in Libya, 2018-2019\***

Categories	Contributors to the Fund
Ministries and public institutions	1384
Foreign businesses	330
Local businesses	732
Administrative bodies	56
Self-employed	27660

At the institutional level, Social Security and Welfare Funds are still considered part of the agencies affiliated to the Ministry of Social Affairs, while enjoying financial and administrative independence. The influence of institutional division on the performance of the two funds is clear, in terms of the difference between the two governments of Benghazi and Tripoli in the structure and subordination to the Ministry of Social Affairs and affiliated institutions. The Ministry of Social Affairs was first annexed to the Ministry of Labour in the Libyan government (east and south), renamed the "Ministry of Labour and Social Affairs", and an undersecretary for social affairs was appointed.

This continued until Resolution No. 800 of 2018 was issued, and the Ministry of Labour and Social Affairs was separated into two ministries; the Ministry of Labour and Rehabilitation, and the Ministry of Social Affairs.<sup>(49)</sup> The structure of the ministry remained the same as in the National

Salvation Government, and the later Government of National Accord, which resulted in much disorder in the subordination of the departments and branches of social affairs.<sup>(50)</sup>

In addition, the political, economic, and social conditions accompanying the change of the political regime in 2011, and the resulting divisions, led to challenges that cast a shadow over the performance of the two Funds and the ministries of social affairs in the east and west of the country. This was manifested in:

1. The depletion and disappearance of many funding sources due to the various crises in the country.
2. The difficulty of maintaining the two Funds united and cohesive, away from the fragmentation and division that affected most state bodies and ministries under political pressure.<sup>(51)</sup>
3. Delaying the procedural finish of social security pensions and basic salaries, bearing in mind that these procedures were carried out on a monthly basis to disburse the pensions to their beneficiaries, and taking into account that even after the completion of these procedures, beneficiaries were usually low-income persons who suffered greatly to obtain these benefits as a result of the liquidity crisis after the political split in 2014.<sup>(52)</sup>
4. Maintenance and construction of certain Ministry of Social Affairs establishments, including various social welfare institutions and investment projects by the Social Security and Social Welfare Fund.<sup>(53)</sup>

50. Mohammed Tantosh, Performance Assessment of the Ministry of Social Affairs in Libya (Arabic), Libyan Organization of Policies and Strategies, p. 9, link: <http://loopsresearch.org/media/images/photo7232zthm9h.pdf>

51. "Idris Hafida: Social Security Fund Tries by Any Means to Stay United and Capable of Performing Tasks and Disbursing Pensions on Time" (Arabic), Address Libya, link: <https://www.addresslibya.co/ar/archives/58339>

52. Mohammed Tantosh, Performance Assessment, p. 9.

53. Ibid.

\* Source: Information and Documentation Management at the Center for Actuarial Studies of the Social Security Fund, Benghazi branch.

49. "Interim Government Decides to Separate the Ministries of Labor and Social Affairs", Afrigate News, December 08, 2018, link: <https://bit.ly/328F93J>

5. Negligence in the performance of some of the social welfare institutions that cover impoverished groups of society, such as orphans, the elderly, people with special needs, and juveniles. This was the result of poor staff performance and lack of support to such institutions, due to administrative and financial problems stemming from the political divide.<sup>(54)</sup>

## 6. The importance of women's participation in social security

Women's participation in social security contributes to a safe and secure future, as it provides protection against old age and disability, and offers women emotional and functional stability. It also provides incentives to raise their efficiency and productivity, which helps them and society as a whole. This requires increasing women's contribution in the labor market, to enable them to take advantage of these benefits, let alone contribute to the acceleration of the country's economic growth.

### Women in the labor market

There were 1.9 million workers inside Libya, according to the 2012 census, amounting to about 48% of the total population. Women's participation, however, did not exceed 34%. This percentage marked a slight increase over the 2006 census, which was 30% (Table 4). The presence of workers of both sexes forms the largest proportion in the public sector, which provides them with job security and social security (Table 3).

**Table 4\_A - The relative distribution of working and economically inactive Libyan population in 1995\***

Contributing to economic activity	Percentage of the total population		
	Male	Female	Total
Economic activity workers	56.79	15.65	41.15
Not in economic activity	34.21	84.35	58.85
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>

**Table 4\_B - The relative distribution of working and economically inactive Libyan population in 2006\***

Contributing to economic activity	Percentage of the total population		
	Male	Female	Total
Economic activity workers	60.48	29.59	45.45
Not in economic activity	39.52	70.41	54.55
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>

As for the percentage of self-employed female workers, whether alone or in partnership with others, they represent 0.06% of actually working women according to 2013 statistics, which means that women's participation in entrepreneurship is very low.<sup>(55)</sup> Women's work in the shadow economy has also grown, thus increasing the demographic segment that does not contribute to welfare, which has made women vulnerable to deprivation of their basic rights to receive pension and health insurance in the event of disability and illness.

The literature of social security deals with women in the informal economy from the perspective of traditional roles between men and women, in

\* Source: Abeer Ibrahim Amnineh, "Policy of women's empowerment in the economic sector: Evaluation study of the situation of women's participation in the Libyan economy, 1969-2009", Economic Research Journal, issues 2 and 3 of 2012, page 21.

55. Hala Bugaigis, Women in the Libyan Job Market: Reality and Challenges, Friedrich-Ebert-Stiftung, link: [https://docs.euromedwomen.foundation/files/ermwf-documents/7511\\_4.6.womeninthelibyanjobmarket-realityandchallenges.pdf](https://docs.euromedwomen.foundation/files/ermwf-documents/7511_4.6.womeninthelibyanjobmarket-realityandchallenges.pdf), p. 20.

54. Ibid.

a way that prevents them from being regarded as true breadwinners. They are often ignored by social protection measures, and do not receive rewards for work at home, since motherhood, child rearing, housekeeping for the elderly and handicapped, and the production of certain consumer goods within the family are all considered voluntary matters for which women are not compensated.<sup>(56)</sup> More often, activities carried out by women outdoors are seen as part of their household duties; these activities are not considered work-related, and are not covered by social protection under the law.

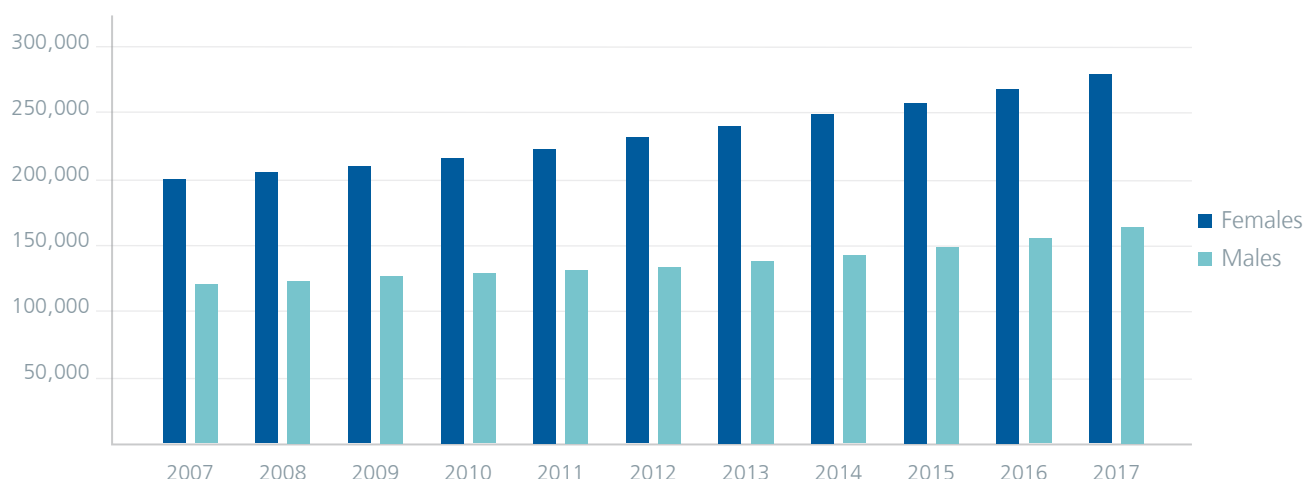
In this case, women are often covered by their husbands' insurance rights, and are not entitled to any compensation in the event of incapacity for work due to illness, maternity, or injury, nor retirement pensions. Under Law No. 13 of 1980 and its executive regulations, the Social Security Fund only provides benefits for those registered in the system, following the commitment by participants of both sexes to pay dictated contributions. Females of retirement age numbered 271,007 as of 2018, whereas men numbered 159,989 according to Social Security Fund data. The increasing number of women

compared to men can be attributed to women's early retirement (Figure 1).<sup>(57)</sup>

Therefore, the law covers the risk of employment injuries, occupational diseases, and retirement pensions, as well as cases of health disability, employment protection during illness or pregnancy and childbirth, and protecting working women's families after death. The conditions of working women in the informal economy remain outside the context of supervision and protection.

Despite the structural change to the system and its institutions in February 2011, this has not reflected positively on the status of working women, due to the absence of strategies and public policies aimed at improving the status of women in the economy. Divisions and political insecurity have affected the labor market in general, and the absence of investment projects led to an increase in unemployment from 13.5% in 2010 to 19% in 2012, reaching 48% among the youth and 25% among women.<sup>(58)</sup> This raises the question of how social security laws deal with the unemployed, given that approximately 5% of current workers in Libya do not have any social protection measures.<sup>(59)</sup>

**Figure 1 - Distribution of population according to their age of retirement according to both sexes, 2007-2017**



56. Ibrahim Quwaider: Studies in Social Security Systems, no further data, p. 211.

57. Distribution of population according to sex and reaching retirement age (2007-2017), Social Security Fund, Libya Center for Research and Actuarial Studies, Department of Information and Documentation, 2019.

58, 59. Ibid., p. 7, p. 11.

## 7. Law No. 13 of 1980 on social security from a gender perspective

Using the article of Law 13 (1980) on social security and its executive regulations, legislators addressed women's issues and granted their positive discrimination, including:

### 1. The mothers of minors

The law grants mothers the right to take custody of their minor children. Article 140 of the social security pension regulations states "minors' pensions are allowed to be disbursed to their mothers without custody; if the mother is unavailable, pensions are disbursed to the guardian recognized by the competent court".<sup>(60)</sup> A person is considered a minor if they "have not reached the age of adulthood, or are insane or intellectually disabled. Those deemed minors also include the missing, estranged, those incapable of taking independent action, the terminally ill, and those in severe debt or deemed equivalent by the competent court."<sup>(61)</sup>

### 2. Old age pension

Legislators also adopted the principle of equality between the sexes in old age pension entitlement, according to the list of social security pension regulations No. 669 of 1981. Article 16 stipulates equality between men and women, as well as between citizens and foreigners, if they meet the conditions of the pension entitlement, most importantly:<sup>(62)</sup>

- That the person is categorized as a participant in the social security system, whether as a partner in the production or an employee, or a self-employed worker.
- That the person's services had finished entirely; they should acknowledge not continuing any work or service which applies under the provisions of the Security Social Law.
- That they have reached the legally-specified age of retirement.

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60. Social Security Pension Regulations (Arabic), link: <https://security-legislation.ly/ar/node/34526>

61. Law No.17 of 1992 regarding the regulation or minors' status and those equivalent, link: <https://bit.ly/2Yesw5P>

62. Social Security Pension Regulations.

- That the end of the service or business due to reaching the legal age had occurred as of June 1981, which is the date set per Social Security Law No. 13 of 1980.

### 3. Combining two pensions

#### ■ Combining two pensions for children

The legislature passed Article 133 of the regulations mentioned for children, male and female, allowing the combination of pensions from two parents both of whom died after becoming pensioners. The combination in this case is without a maximum extent.<sup>(63)</sup>

#### ■ Widow's collection of two pensions

In accordance with Article 131 of the social security pension regulations, the legislature allows widows to combine their deceased husbands' pensions with any other pensions, due to old age or total disability. According to the Social Security Law, the combined pension must not exceed the higher of the following:<sup>(64)</sup>

1. The maximum limit of the social security pension due to old age or total disability.
2. The maximum pension of the deceased pensioner.

### 4. Pension benefit entitlement

Through Article 141 of the Social Security Pensions Regulations, the legislature upholds the rights of daughters, mothers, or sisters to return to the pension entitlement after losing it for being married at the time of the death of pensioners. If deprived of the pension on the grounds of being married, the pension is returned in cases of divorcees or widows after deciding their proportion of pension based on the assumption that they were entitled to a pension at the time of death.<sup>(65)</sup>

The legislature also allows, through Article 143, for the return of pension eligibility to widows

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63. Ibid.

64. Ibid.

65. Ibid.

if they are deprived of it due to remarriage and then divorced or widowed. The pension due is returned on the grounds of being a widow for a first husband, if not entitled to a pension for the last husband; in this case, the widow receives the most beneficial pension. In the event of returning due pension to one of the deceased's widows, it is taken into account that the pension of the other widows of the deceased (if any) is to be reduced by the same amount to which the widow is entitled as a result of divorce or widowhood.<sup>(66)</sup>

In the case of the death of a pensioner with a pregnant wife or wives, the pension is redistributed after the wife/widow or wives/widows give birth to a live baby or babies. The redistribution is based on the assumption that the birth took place before the pensioner's death, as follows:

- In case of multiple widows, the pension is distributed equally among them.
- In case of multiple male or female children, the pension is distributed equally among them.
- In case of the presence of two parents, who fulfill the conditions of entitlement, the pension shall be divided equally.

The legislature has also included the right of eligible foreigners to the pensions of Libyans, such as widows, or children, or parents eligible to Libyans' pensions, where the annual changes to their status are monitored and annual data on their situation is provided, and they are treated like Libyan citizens without requiring residency.<sup>(67)</sup>

## 5. Pregnancy benefit

The legislature grants a subsidy to a pregnant woman amounting to 3 dinars, for the period starting from the fourth month of pregnancy until the completion of the birth. Its disbursement ends in the following cases:<sup>(68)</sup>

1. Giving birth or miscarriage, whether this leads to the birth of a live or dead child with full or incomplete development.

2. Abortion of pregnancy.
3. If the pregnant woman fulfills her right to the maximum pregnancy benefit, by completing the aforementioned disbursement value for a period of six months.

A pregnant woman's receipt of any in-kind or other financial advantages to which she may be entitled on the occasion of her pregnancy does not preclude her entitlement to the pregnancy benefit, as long as she meets the conditions for entitlement to this benefit.

## 6. Maternity grant

This is a lump sum social security grant of 25 dinars, which is due in one payment in cases of childbirth, to the recipient of one of the social security disability pensions. The legislature has exempted maternity and burial grants from all taxes pertaining to income, "jihad," stamps, and other judicial fees. The right to this grant or benefit does not expire after a period of time.

Entitlement to this grant requires the beneficiary or the pensioner to give birth or endure miscarriage, whether the baby was alive or dead, fully developed or not, on condition that the birth was six months after conception and contributions were paid for at least four months.

There are those who see this Article as discriminative against a group of women with disabilities, since, according to this regulation, contributing women who are entitled to security pension due to work injury or occupational disease, or because of total disability due to other than work injuries or occupational diseases, are the ones entitled to this grant, as opposed to women with disabilities, who are entitled only to basic pension. This represents an unjustified distinction whereby women with disabilities - and basic pensions - are deemed not to be in need of this grant.<sup>(69)</sup>

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66. Ibid.

67. Ibid.

68. Ibid.

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69. Misrati, Legal System of Social Protection, p. 254.

## Retirement age

The legislature grants men and women equal right to optionally extend the retirement age until 70, according to Law No. 1 of 2018, on the condition that the minimum retirement age for women is 60,<sup>(70)</sup> while the minimum age for men is 65, with some exceptions for members of the Supreme Court and judicial bodies. Some consider the difference in the minimum age for retirement between the sexes as indicative of negative discrimination, where the difference in the number of work years can affect the value of women's pensions.

## 7. Entitlement to pension for the daughters of deceased participants or pensioners

Social security pension regulations organized the status of daughters of deceased pensioners, approving the share of unmarried daughters until they are married, as well as divorcees or widows until remarriage, as per Article 125 of the pension regulations. Shares are distributed equally between the sexes if entitlement is applied.<sup>(71)</sup>

## 8. The most important challenges of Law 13 of 1980 from a gender perspective

Despite the positive discrimination in favor of women in many articles of the law, some negative aspects may be identified, which have prevented a more efficient benefit. These include:

### 1. The slow pace of completing the procedures for entitlement to the security pension

Article 149 of the social security pension regulations stipulates the need to hurry in disbursing pensions, within a maximum limit of three months. However, this duration is relatively

lengthy, since this demographic is of urgent need for entitlement without delay due to multiple commitments. This can be addressed through the issuance of special credit cards for social security pensions and basic pensions, by directly regulating between the Welfare and Social Security Funds on the one hand, and the central or commercial banks on the other, without the need for pensioners to engage in long and complicated bureaucratic procedures.<sup>(72)</sup>

### 2. The prohibition on combining more than one pension

According to Article No. 153 of the social security pension regulations, a person cannot combine more than one pension, whether these pensions are due from the Social Security Fund (in accordance with the provisions of the Social Security Law and these regulations) or according to retirement legislations, or social insurance, or what leads to it from the treasury. If the person deserves more than one of the aforementioned pensions, regardless of the reason for entitlement, only the most beneficial pension is allocated, given that the regulations show the cases that allow exceptions to these rules and the extent of these exceptions.

The same applies to working women, as stated in Article No. 133 of the social security pension regulations; namely that they are only paid the most beneficial pension, hence a comparison is made between their pension and their husbands', with a maximum limit. As for a widower, it is required for entitlement to his wife's pension that he be fully incapacitated and not a participant in the social security system.

These terms require an amendment to the law and the executive regulations, as well as awareness-raising to address the competent authorities with Article No. 26 of the Libyan Civil Code, related to the preference of international convention over the law. In this context, Convention No. 5 of 1975, via Article No. 16 regarding working women for the Arab Women Organization,

70. Social Security Fund - Tripoli Branch, Facebook Page, link: <https://www.facebook.com/ssft.media/photos/pcb.1758955264413204/1758955174413213/?type=3&theater>

71. Social Security Pension Regulations.

72. Rabia Bin Omran, "Workshop report on the amendments to social security legislations" (Arabic), Washm Women Studies Center, April 27, 2019.



states that, “A working woman has the right to combine her wages or pensions, and the pension from her husband without a maximum limit - and the husband of a working woman has the right to combine his wages or pensions with his wife’s pension without a maximum limit, and the children of a working woman have the right to combine their pension for their father and mother without a maximum limit”.

On that basis, the General Assembly of the First Instance Court was called upon with regard to the referred article and accepted its promotion before the Social Security Settlement Committee. The latter, however, did not respond, and ruled in favour of general law over the Arab Convention text regarding working women.<sup>(73)</sup> Therefore, it is important for the legislature to pay attention to granting women the right to combine work wages with deceased husbands’ pension, without their work income having any effect on entitlement to this share, taking into account family conditions and livelihood. This would be considered a quantum leap in the field of promoting economic and social protection for working women in Libya.

### **3. The complexity of supplementary basic pension procedures**

Despite the adoption of the supplementary basic pension to demographics whose retirement pensions are insufficient, and who are entitled to basic pensions (the elderly, widows, and orphans),<sup>(74)</sup> the core problem lies in the procedural complexity of supplementary pensions, and the inconsistency between the amount of pensions and the reality of life, not to mention a lack of communication among concerned authorities through a uniform system which would make the disbursement of pensions automatic as soon as entitlement conditions are met.

### **4. Dealing with the non-Libyan community**

One of the most important criticisms of the implementation mechanisms of Law No. 13 of 1980 for Social Security is how it deals with the

non-Libyan community. Even though the law did not stipulate that Libyan nationality was necessary, executive bodies-imposed restrictions requiring Libyan nationality, and placed obstacles before non-Libyan mothers that prevented them from accessing pension shares of minor children, contrary to the law. This requires intervention in the form of a legislative text, and work to organize and facilitate both Libyan and foreign mothers obtaining the pension shares of their children, in addition to cooperation by the competent authorities (courts, municipal councils, social affairs and affiliated entities) to ensure that minors enjoy pension shares through their guardians.

### **5. Heirs’ reluctance to obtain inheritances**

Among the obstacles that pose challenges for women’s rights is reluctance by heirs to obtain their due inheritances, resulting in disrupting the payment of pensions, which also requires the creation of a mechanism for cooperation between the competent authorities to enable that. A Social Affairs office can be established in court to facilitate collaboration with the public prosecutor.<sup>(75)</sup>

### **6. The relationship between the Social Security Fund and the private sector**

Being an executive rather than supervisory body, the Fund lacks the mechanism to impose social security contributions on the private sector,<sup>(76)</sup> thus leaving many women unable to access any form of protection, whether due to the intransigence of the employer or the woman’s ignorance of her rights.

### **7. Banks’ intransigence in opening accounts for women**

Opening a current account for women to receive their pension or their children’s requires legal grounds that can take relatively long time periods to meet. Despite the administrative facilities of the social security administration to issue a preliminary legal status of the beneficiary,

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73. Ibid.

74. Resolution No.578 of 1982 on organizing basic pension, link: <https://security-legislation.ly/ar/node/33805>

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75. Bin Omran, Workshop Report.

76. Reem Al-Shukri, director of legal affairs in the Social Security Fund, an interview with the research team, on 8/3/2020.

the response is often slow by the bank, for no legitimate reason, thereby depriving women of basic pension benefits as well as their status as guardian to their minor child.

### **8. Ineffective pregnancy, childbirth, and death benefits**

The financial sums allocated for women's benefits for pregnancy, birth, and death are very small and do not meet the growing requirements of life. There has been a proposal to increase the value of birth grants to 500 dinars, and deceased husbands' grants to about 1,000 dinars,<sup>(77)</sup> but it has not been approved thus far.

### **9. The low value of security pensions**

The value devoted to security pensions is very small, which necessitates work to increase it. The director-general of the Social Security Fund has stated that his efforts have been ongoing for years with successive governments (although the Social Security Fund has no formal authority to increase pensions) in order to obtain the decisions needed to increase the value of inadequate pensions of all kinds, and achieve a decent standard of living for beneficiaries. These efforts have led to the issuance of Resolutions 270 and 271 of 2014, which raised the value of contribution to 25%.<sup>(78)</sup> However, the Fund's financial position does not allow the total coverage amount stated by the resolutions, which require approximately 6 billion dinars. According to statements by its director-general, the Fund communicates with various ministries of finance in search of a practical formula, whereby the pension increase can be achieved without posing risk to the Fund's finances.<sup>(79)</sup>

### **10. The impact of political division on social protection**

Political division, along with the outbreak of war in several Libyan cities, has led to increased displacement into and out of various regions in the country. Among the displaced persons are variegated groups of men and women alike who are entitled to basic pensions. This poses challenges to the Social Security Fund's work and administration in the absence of documentation and the regular limiting of contributors due to divisions within the Fund's administration, resulting in highly disruptive procedures for the displaced, and greater suffering for women in particular.<sup>(80)</sup>

It is evident that the fundamental flaw here lies in the implementation mechanism, and how the letter of the law is understood by those who enforce it. This has resulted in individual errors by the Fund's employees, or from outside, by employees of the relevant authorities.<sup>(81)</sup> Therefore, due consideration must be given to raising awareness of the process of the law and its executive procedures among all employees in social security and welfare institutions. Awareness must also be raised regarding the law itself, and the rights granted to all demographics, not to mention the importance of partnership between the various CSOs and the Social Security and Welfare Funds to promote amendments to some of the aforementioned articles, so that men and women may enjoy an integrated and fair umbrella of social protection.

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77. Zakia Qadir, the legal consultant of the Social Security Fund, an interview with the research team, on 8/3/2020.

78. "Idris Hafida: Social Security Fund Attempts to Remain United", Address Libya.

79. Ibid.

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80. Alsharif Almasri, the legal advisor to the Social Security Fund, interview with the research team on May 4, 2020.

81. Ibid.

## Conclusion

The social security system is the most effective tool to provide income security, avoid poverty, and achieve equality and social integration. However, it faces a large number of challenges that have considerably strained its efficacy in providing adequate protection from growing poverty and vulnerability among all demographics, especially women.

Some obstacles have contributed to weakening social protection, such as the lack of policy integration and lack of coordination between the concerned authorities; the high unemployment rate; the low economic participation of women; and the existence of an unregulated work sector. Collection of contributions has been disrupted, due to political instability and people leaving the labour market without receiving pensions to protect their dignity and provide them with a decent standard of living. Therefore, this study recommends the following:

- Supporting the social security system and ensuring its financial and social sustainability, by working to face the challenges that protection systems usually face, namely the ability to cover (social inclusion); suitability (adequacy and fairness of benefits); and financial sustainability (financing and sustaining benefits).
- Carrying out a set of general economic reforms and improving the legislative system, with the aim of increasing the percentage of women participating in the national economy,<sup>(82)</sup> in addition to expanding the areas of protection for working women, by providing housewives and self-employed women the right to social security coverage to obtain protection and secure pensions, which would mark a quantum leap in the field of insurance and social protection.
- Working to raise the financial values assigned to women, in such areas as pregnancy and childbirth benefits, and to raise the increase for the security pensions mentioned in this

study, in order to respond to the increasing economic and social requirements, and to protect women against falling into poverty and its ramifications.

- The legislature should grant widows the right to combine their wages from work with the full share of their deceased husbands' pensions, without their income from work having any effect on their pension entitlement. This would enhance the economic and social protection of working women in Libya. Such a procedure is already applied in certain Arab countries, such as Jordan, where it is possible for a widow to combine her share of retirement pension or basic pension inherited from her husband with her share of the retirement and illness pensions that are passed on to her from her parents and children.<sup>(83)</sup>
- Raising awareness of Law No. 13 of Social Security and its executive procedures for all workers in social security and welfare institutions, in order to facilitate executive procedures and avoid misinterpretations that affect the rights of women guaranteed by the law, especially with regard to the rights of non-Libyan women.
- The legislative branch must be called upon to address the amendment of Article No. 13 of the Social Security Law regarding the unification of retirement age of male and female participants.
- Working to develop the research and database for social security and welfare, by including a gender perspective in the data collection and analysis process. The Libyan Centre for Research and Actuarial Studies has given greater attention to studying implemented policies from a gender perspective, due to the importance of monitoring the challenges facing women on the one hand, and to contribute to improving policies and ensuring the sustainability of social security and welfare services for all entitled groups on the other hand.

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82. Ibid, p. 9.

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83. The General Institution of Social Security, Facebook Page, link: <https://www.facebook.com/JordanSSC/posts/480227585379742/>

- The Social Security Fund must work to update the Daman Mobile application, which aims to provide a package of electronic services to retirees,<sup>(84)</sup> so as to solve its technical problems and find a mechanism to train the people concerned on using such efficient tools to bring services closer, since the inability of many stakeholders to deal with such applications hinders the optimal use thereof.
- Working on issuing credit cards for social security and basic pension beneficiaries, by organizing direct mechanisms between the Solidarity and Social Security Funds on the one hand, and the central bank or commercial banks on the other, without the need for pensioners to engage in long and complicated bureaucratic procedures. This would address slow and complex procedures
- Interest in social security community awareness, and the use of all means to define policies and strategies for protection in Libya, with a focus on the gender perspective, not to mention explaining the Social Security Law and the related social security regulations, again with a focus on gender.

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84. <https://play.google.com/store/apps/details?id=com.libya.pensionlibya.mypension&hl=ar>





## About Washm Women Studies Center

The Washm Center for Women's Studies is one of the civil society organizations in Libya that cares about scientific studies with regard to issues of social review and relevant legislation, and offers proposals for research and explanation regarding the study of the status of women in the stages of presentation and peace, and in particular issues of political and economic empowerment, and on building women's capacities in them.



مركز وشم لدراسات المرأة  
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