

The Bahamas

1. Discrimination in the family

a) Overarching legal framework for marriage

The Marriage Act (1907), Chapter 120 is the overarching legal framework for marriage in the Bahamas. Women and men have equal rights to enter a marriage and to file for divorce or separation under Chapter 120. Forced marriage is defined as marriage between two persons, under the age of 18 and without the consent of the parents or guardian. It can also be the result of compelling someone to enter a marriage without consent or under duress (Marriage Act, Chapter 120 (20)).

There are no legal provisions that prohibit discrimination against widows and though families and communities recognize informal or common-law unions, there is no legislation that protects the rights and responsibilities of those in such unions (CEDAW Country Report, 2017). Despite no legislative provisions in place, the courts recognise the rights to property of those in common-law unions during and upon dissolution of the union (CEDAW State Report, 2011).

Section 24 of the Inheritance Act protects a widow from eviction from the matrimonial home (Inheritance Act, 2002). There is no legislation that regulates the marriage of a widow to her deceased husband's brother, however the Marriage with Deceased Wife's Sister Act, Chapter 122 declares that "where a man has, whether before or after the passing of this Act, and whether in the Bahamas or elsewhere, married his deceased wife's sister, the marriage, if legal in all other respects, shall be, and shall be deemed always to have been legal for all purposes, unless either party to the marriage has subsequently, during the life of the other, but before the passing of this Act, lawfully married another" (CEDAW State Report, 2011).

b) Child marriage

The legal age of marriage for both men and women is 18 but there are legal exceptions for early marriage when consent from the parents, guardians or the Supreme Court is granted (Marriage Act, Chapter 120). There are no public measures or legislated action to support the enforcement of laws on the minimum age of marriage, but there are no noted customary, religious or traditional practices or laws that encourage the early marriage of boys and girls and early marriage is reportedly not very common.

c) Household responsibilities

All men and women can be the household head in the Bahamas and there are no legislated requirements for a married woman to obey her husband. Both men and women have the same legal rights and responsibilities to be the legal guardians and to care for their children regardless of marital status (Child Protection Act (6)). All women and men have the legal right to choose where to live (CEDAW Country Report, 2017).

The 2017 CEDAW Country Report notes that women remain the primary caregivers in the home. Men and women are expected to hold distinct roles and responsibilities following the traditional “breadwinner” versus “homemaker” binary. The Bureau of Women’s Affairs uses its monthly meetings with women and NGOs to continue to interrogate and challenge these gendered stereotypes that maintain gendered roles and discrimination through dialogue and feedback (CEDAW Country Report, 2017).

d) Divorce

All women and men have the legal right to initiate and finalise a divorce, annulment or judicial separation (Matrimonial Causes Act, Chapter 125 (3), (4)). Upon the finalisation of the divorce, women and men have a legal responsibility to be the guardians and to care for their children (Guardianship and Custody of Infants Act, Chapter 132 (7), (10)).

The 1879 Matrimonial Causes Act (last amended in 1983) requires proof of significant fault before a divorce can be granted and is not based on the irretrievable breakdown of the marriage. The Act states that the grounds upon which a petition for divorce can be filed are adultery, desertion, cruelty, if the parties have lived apart for a continuous period of 5 years immediately preceding the petition or if the party is guilty of a homosexual act, sodomy or sexual relations with an animal. A woman may also submit a petition if since being married, her husband was found guilty of rape (CEDAW State Report, 2011). The construction of fault may lead to stressors being placed on the family and children which may fuel bitterness and animosity for the divorcing couple.

e) Inheritance

The Wills Act 2002, Chapter 115 and the Inheritance Act 2002, Chapter 116 form the overarching legislative umbrella for inheritance rights in the Bahamas. Where the Wills Act governs inheritance under a will, the Inheritance Act provides for inheritance rights when the deceased has died intestate. Daughters have the same rights as sons to inherit land and non-land assets (Inheritance Act 2002, Chapter 116; Wills Act, 2002, Chapter 115). The 2002 Inheritance Act and the 2002 Wills Act, also grant female surviving spouses with the same inheritance rights as male surviving spouses. All women and men have the same rights to draft a will and in the absence of a will, the legislation will take precedence. There is no stated legislative prohibition that provide for differential inheritance rights for unmarried men and women. Disinheritance and property dispossession/grabbing are not explicitly named and prohibited in the legislation.

2. Restricted Physical integrity

a) Violence against women

There is no standalone legislation that explicitly addresses violence against women. However, it can be addressed under the Domestic Violence Act (Protection Orders Act), 2007. In July 2013, the government established the National Task Force on Gender-Based Violence which was mandated to oversee the “development, implementation and coordination of a national strategic plan to address gender-based violence” (CEDAW Country Report, 2017). As part of its mandate, the Task Force submitted its Strategic Plan to address Gender-based Violence in August 2015.

The Strategic Plan is a coordinated, multi-sector, inter-agency and multi-level approach to addressing violence against women and identifies the need for the state to be more deliberate and intentional about collecting data on violence against women (CEDAW Country Report, 2017). The Plan addresses multi-sectoral coordination, institutional strengthening, advocacy and awareness, education and training, research and surveillance and the coordination of civil society activities. A clear implementation strategy is included in the report with a set of immediate, short-term and long-term goals. Included in the plan is a results and resources framework that includes a set of goals such as “the ten, low hanging fruits” which are ten prevention-based initiatives identified as key and that can be achieved almost immediately. They are described as “practical, doable, measurable” and are expected to be led by a mix of government agencies (Strategic Plan, 2015).

b) Domestic violence

The Domestic Violence Act (Protection Orders Act), 2007 is the overarching piece of legislation that governs violence against women. In the Act, domestic violence is defined as “physical, sexual, emotional or psychological or financial abuse committed by a person against a spouse, partner, child, any other person who is a member of the household or dependent” (Domestic Violence Act, 2007) which limits the conduct to that which takes place within the home. The Act lays out a process to investigate, prosecute and punish the perpetrator and the provision of protection and support services for victims and survivors.

In 2014, the Department of Social Services established the Domestic Violence and Counselling Unit to provide direct intervention and services to victims of violence and their children (CEDAW Country Report, 2017). Since its inception, the Unit has not embarked on a public awareness campaign; however, to commemorate its 50th anniversary, the Unit hosted a public exhibition under the auspices of the Department on intimate partner violence (CEDAW Country Report, 2017).

The Royal Bahamas Police Force works with an NGO-managed safe house to provide support to women fleeing violence and needing temporary refuge (CEDAW Country Report, 2017). The government also provides grants and funding support to NGOs and religious organisations to help facilitate their work around providing support to survivors and victims of violence (CEDAW Country Report, 2017).

Depending on the nature and gravity of the domestic violence complaint filed with the police, either the local police or the Central Detective Unit will respond. With regards to a major offence, the officers in the Central Detective Unit, after having received sensitivity training will respond (CEDAW Country Report, 2017).

Some women’s rights groups have noted a hesitancy from law officials to intervene in domestic disputes (Curry, 2016).

c) Rape

Rape is a criminal offense under the Sexual Offences Act, Chapter 99. Rape is defined as someone aged 14 years old or older having sexual intercourse with someone who is not their spouse without the consent of that other person; with consent obtained through threats or fear of bodily harm and with consent obtained through impersonation of that person's spouse and or false and fraudulent means

(Sexual Offences Act, Chapter 99 (6)). For a first offence of rape, the maximum penalty is 7 years. For subsequent rape charges, the maximum penalty is life imprisonment.

The definition of rape does not include marital rape and the law does not provide additional penalties for aggravated forms of rape and sexual violence including 'gang rape' (Sexual Offences Act, Chapter 99 (15)).

The Bahamas has the highest number of rape cases reported throughout the Caribbean – in spite of the fact that a small percentage of survivors actually report the incident to the police (UN Women, n.d.). There is also a lack of data regarding incidents of acquaintance/date rape (National Strategy, 2015). Therefore, the numbers may not necessarily reflect the rate of those impacted. Barriers faced by those who report wish to report a rape case include discriminatory attitudes towards women and girls from law enforcement officials due to a culture of disbelief, victim blaming, as well as low conviction rates, the large number of cases that remain unsolved and/or perpetrators never being identified (UN Women, n.d.)

d) Sexual harassment

Sexual Offences Act, Chapter 99 (26) lists sexual harassment as a criminal offence. The definition of the Sexual Offences Act covers harassment in the workplace but not in educational institutions, sporting facilities nor public spaces and it does not address cyber stalking and online harassment (Sexual Offences Act, Chapter 99 (26)). Section 26 of the Act also prohibits the solicitation of sexual favours as a term of employment from prospective employers and if found guilty, an employer can be fined BSD 5 000 and/or face two years imprisonment (National Strategy, 2015).

e) Female genital mutilation

There is no law addressing female genital mutilation in the Bahamas and no evidence that it is practised.

f) Abortion

Abortion on demand is illegal and punishable of up to 10 years imprisonment (Penal Code, 1924, Chapter 84 (295), (309) (316)). Abortion is allowed with the approval of a licensed medical practitioner and in the event of a threat to the physical or mental health of the pregnant woman, if there is a risk to the foetus or if the pregnancy is a result of rape or incest (Penal Code 1924, as revised (313), (316), (330) and (334)).

The 2011 Fifth Periodic State report to CEDAW notes that though women and men have equal access to a range of healthcare services in the Bahamas, women are underserved in accessing emergency contraception and natal care during and after abortions (CEDAW State Report, 2011).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

All women and men have the same rights to own, access, use as collateral and make decisions about land, property and non-land assets regardless of marital status (Married Women's Property Act,

Chapter 129 (2); Constitution of the Commonwealth of the Bahamas 1973, Article 15; Administration of Estates Act, Chapter 108 (28)). The Married Women's Property Act, Chapter 129 guarantees a woman's right to administer property without the consent of a spouse or male guardian, regardless of whether the property was acquired during marriage or was brought into the marriage (CEDAW State Report, 2011).

Given that informal unions or common-law unions are not legally recognized by the state, women in these relationships do not have rights to joint land tilting for land use on property acquired during the relationship (Matrimonial Causes Act, Chapter 125 (45)).

b) Secure access to formal financial resources

All women and men have equal rights to open a bank account and access credit at formal financial institutions without seeking permission from their spouse (CEDAW Country Report, 2017).

Through an annual BSD 50 000 grant provided by the Government through the Department of The Bahamas Cooperative League, women are provided information and training on the development of cooperatives.

c) Workplace rights

In the Bahamas, all women and men have equal rights to employment and to enter the profession of their choosing. The amended Employment Act, 2001 protects female employees from discrimination in the recruitment, hiring, training and promotion phases in the context of work (Employment Act 2001, Chapter 321A (6)). The law also guarantees equal pay for work of equal value (Employment Act 2001, Chapter 321A (6)).

Paid maternity and unpaid paternity leave are protected under the Employment Act 2001 but there are no provisions for parental leave (Employment Act 2001, Chapter 321A (17)). The minimum amount of time guaranteed under maternity leave is 12 weeks with 33.3% of the worker's wages covered by the employer and the government (Employment Act 2001, Chapter 321A (17)). The father of the child can apply for a 7-day unpaid paternity leave (World Bank, 2016). A woman's job and seniority is protected while she is on maternity leave (Employment Act 2001, Chapter 321A (21), (22)). However, the law does not explicitly prohibit an employer from asking a woman about her family status, pregnancy or her intention to become pregnant during the recruitment and hiring phases.

There is no specific body tasked with receiving, investigating, adjudicating and enforcing complaints of gender discrimination in employment.

4. Restricted Civil liberties

The Bureau of Women's Affairs (BWA) is the national machinery mandated to assess and promote the advancement of women's rights. Though not legislated, the BWA is tasked with monitoring, evaluating and reporting on how well the Bahamas is complying with its international obligations under conventions and regulations that were adopted by the Government (CEDAW Country Report, 2017). The BWA holds monthly meetings with non-governmental organizations (NGOs) and interested women to gather information on issues important to them; to share updates and obligations by the state under international law and conventions and to engage in consciousness raising about women's

rights (CEDAW Country Report, 2017). The BWA also led the drafting of the National Gender Equality Policy and the National Strategic Plan for Ending Gender-Based Violence in The Bahamas (CEDAW Country Report, 2017).

a) Citizenship rights

Women do not have the same rights as men to acquire, change and retain their nationality. Women are not able to confer nationality to their children or spouses who are foreign nationals in the same way as men (Constitution Act, Chapter II, Sections 6, 8, 9, 12). Though Bahamian women and men can apply for a Resident Spouse Permit to gain residency and employment protections for their non-Bahamian spouse, the success of that application is determined on how convinced a processing officer is of the authenticity of the marriage (CEDAW Country Report, 2017).

Women have the same rights as men to register the birth of their children (Births and Deaths Registration Act, Chapter 188, Section 12).

There are no national identity cards in the Bahamas. Passports are issued to Bahamian citizens and all women and men have equal rights to apply for passports and to acquire passports and other travel documents for their minor children (Passport Rules Act, Chapter 192).

Freedom of movement within and outside the borders of the Bahamas is guaranteed to all women and men under the Constitution (Constitution, Chapter III (29)).

b) Voting

Women have equal voting rights as men. Though full voting rights were not exercised until November 1962, "An Act to enable women to have and exercise rights of registration as voters and of voting similar to those accorded to men under the provisions of the General Assembly Elections Act 1959" came into effect on June 30, 1961 making it legal for women to vote. The law does not provide for any measures to promote awareness and understanding around a woman's right to vote.

c) Political voice

As guaranteed in the Constitution and Citizenship Act (Citizenship Act, Chapter 8) and the "Act to enable women to have and exercise rights of registration as voters and of voting similar to those accorded to men under the provisions of the General Assembly Elections Act 1959", all women and men have equal rights to hold public and political office in all levels of government.

There is no legal requirement for measures or quotas to promote women's political participation at any level of government. Statistics show that though some women occupy influential leadership positions, that the percentage of those nominated and successful in winning their candidacy is quite low (CEDAW Concluding Observations Addendum, 2014). Similarly, there are no incentives or disincentives for political parties to include women as candidates and no formal training offered to encourage and support women's participation.

Activities led by the Bureau of Women's Affairs and celebrations such as International Women's Day have been used to encourage women to participate in politics. In partnership with other stakeholders, the Bureau established a number of temporary measures to help prepare potential female candidates for the 2017 General Election (CEDAW Concluding Observations Addendum, 2014).

d) Access to justice

All women and men have the same legal capacity to be sued and to sue (Married Women's Property Act, Chapter 129 (2), (8)). The weight of a woman's testimony in civil, criminal, family and tribunal proceedings carries the same evidentiary weight as a man's (Constitution, Chapter III (20)).

Additional provisions to enable access to justice have been made available for all women living in the rural areas. One of the provisions allows for civil and criminal matters to be heard by the neighbouring administrator/magistrate court (CEDAW Country Report, 2011).

There is no legislation or measures in place to protect women from violence in political and public life and to protect human rights defenders whose lives are at risk of violence and harassment.

Sources

Alexander, Jacqui M. "Not Just (any) Body Can Be a Citizen: The Politics of Law, Sexuality and Postcoloniality in Trinidad and Tobago and the Bahamas." *Feminist Futures* 48, no. 1 (1994): 10.

Curry, Gaynel, 2016, Overview of Violence Against Women in the Bahamas, OHCHR-NYO. https://hr.un.org/sites/hr.un.org/files/Sabbatical%20Report_VAW%20in%20the%20Bahamas_GaynelCurry_June%202016_0.pdf

The Bahamas, Administration of Estates Act, Chapter 108. <http://extwprlegs1.fao.org/docs/pdf/bha42442.pdf>

The Bahamas, Births and Deaths Registration Act, Chapter 188. http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1929/1929-0002/BirthsandDeathsRegistrationsAct_1.pdf

The Bahamas, 2007, Child Protection Act. https://www.oas.org/dil/The_Child_Protection_Act_Bahamas.pdf

The Bahamas, Constitution. <https://www.bahamas.gov.bs/wps/wcm/connect/d40cb8f8-2e95-4f05-a8de-105e88bdb7ac/Chap+2+Citizenship.pdf?MOD=AJPERES>

The Bahamas, Domestic Violence Act (Protection Orders Act), 2007. http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/2007/2007-0024/DomesticViolenceProtectionOrdersAct_1.pdf

The Bahamas, Employment Act 2001, Chapter 321A. http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=60973

The Bahamas, 2011, Fifth Periodic Report to the Committee on the Elimination of Discrimination against Women. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fBHS%2f5&Lang=en

The Bahamas, Guardianship and Custody of Infants Act, Chapter 132. <http://www.cavehill.uwi.edu/LAWLIBRARY/getattachment/453d9696-052f-44da-a114-f9b1a735f218/GUARDIANSHIP-AND-CUSTODY-OF-INFANTS-ACT.aspx>

The Bahamas, Inheritance Act 2002, Chapter 116. http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/2002/2002-0003/InheritanceAct_1.pdf

The Bahamas, 2012. CEDAW List of issues and questions with regard to the consideration of periodic reports: Bahamas http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/CEDAW-C-BHS-Q-5-Add1_en.pdf

The Bahamas, Marriage Act, Chapter 120. http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1908/1908-0004/MarriageAct_1.pdf

The Bahamas, Married Women's Property Act, Chapter 129.
https://www.oas.org/dil/The_Married_Womens_Property_Act_Bahamas.pdf

The Bahamas, 1973, Nationality Act, Chapter 190.
http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1973/1973-0018/BahamasNationalityAct_1.pdf

The Bahamas, Passport Rules Act, Chapter 192.
http://laws.bahamas.gov.bs/cms/images/LEGISLATION/SUBORDINATE/1965/1965-0140/PassportRules_1.pdf

The Bahamas, Wills Act, 2002, Chapter 115.
http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/2002/2002-0004/WillsAct_1.pdf

The Bahamas, Matrimonial Causes Act, Chapter 125.
http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1879/1879-0006/MatrimonialCausesAct_1.pdf

The Bahamas, Sexual Offences Act, Chapter 99.
http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1991/1991-0009/SexualOffencesAct_1.pdf

The Bahamas, 2015. Strategic Plan to Address Gender-Based Violence.

<https://www.bahamas.gov.bs/wps/wcm/connect/3be7c3ad-862c-4c0f-ac44-a2833552e00b/GBV+REPORT.Final.+August2015.pdf?MOD=AJPERES>

The Bahamas, 2017, Sixth Periodic Report to the Committee on the Elimination of Discrimination against Women.
http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BHS/CEDAW_C_BHS_6_5912_E.pdf

The Bahamas, Penal Code, 1924, Chapter 84.
http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1873/1873-0015/PenalCode_1.pdf

UN Women, n.d. Gender-Based Violence and Citizen Security in the Caribbean.