

Djibouti

Djibouti ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in December 1998, with no reservations (UNICEF, 2011). The *Union Nationale des Femmes Djiboutiennes* (The National Union of Djiboutian Women), a non-governmental organization (NGO) was founded after the country gained independence in 1977. In 1999, a ministry responsible for the advancement of women, family welfare and social affairs was established, directly answerable to the Prime Minister. The Ministry for the Advancement of Women, Family Welfare and Social Affairs became a fully established ministry in 2008 (CEDAW, 2010) and was later renamed to the Ministry for the Advancement of Women and Family Planning. The Ministry for the Advancement of Women reportedly experiences administrative and financial problems, including a shortage of qualified staff to implement and follow up the CEDAW, compounded by a lack of indicators and inadequacy of statistical data on women (CEDAW, 2010).

Article 1 and 10 of the Constitution (1992) guarantee the equality of all citizens before the law, without distinction as to origin, race, sex or religion. The Penal Code (2011) states that “any distinction among individuals based on their origin, sex, family status, state of health, disability, customs, political opinions, trade-union activities or affiliation or non-affiliation, whether actual or assumed, with a specific ethnic group, nation, race or religion shall constitute discrimination” (Article 390). Discrimination is classified as a criminal offence, with penalties of two years’ imprisonment and a fine of DF 500 000 (Penal Code, 2011).

The three main groups constituting the country’s national community are Somalis, Afars and Arabs (Central Intelligence Agency 2016). 98% of the population of Djibouti is Muslim (CEDAW, 2010), the remaining 2% are Christians.

1. Discrimination in the family

a) Overarching legal framework for marriage

The judicial system in Djibouti is based on the French Civil Code. Sharia law forms the basis for family and personal status laws (UNICEF, 2011). The Family Code (2002) synthesizes personal status laws, modern law, customary law and Muslim law (CEDAW, 2010). Family life, including marriage, parentage, divorce, maintenance and inheritance are governed by the Family Code (Family Code, Article 155; CEDAW, 2010). The Family Code is implemented by judges of the Personal Status Court (CEDAW, 2010).

The Family Code reads that the family is the union of two spouses of different sexes (Article 1). Women have the right to enter into marriage freely. However, there are several requirements for the validity of marriage as a woman may enter into marriage only with the consent of a guardian (Article 7); the presence of two witnesses; and the setting of the *mahr* (dowry) (Articles 7, 20 and 21). In addition, women are only allowed to marry a non-Muslim man unless he converts to Islam (Article 23).

Polygamy is authorised by the Family Code (Article 22). Existing wives are required to be told of any plans for a new marriage. Before concluding a marriage contract with an additional wife, a judge has to investigate the socio-economic situation of the husband and also records the opinion of the wife (CEDAW, 2010). Wives are able to challenge their husband's new marriage and are entitled to receive fair compensation for damage suffered or have the opportunity to request a divorce (Article 22). Many marriages are polygamous (Africa for Women's Rights, n.d.).

b) Child marriage

Under the Family Code (2002) the minimum age of marriage for men and women is 18 years of age (Article 13). However, with the consent of a guardian, the marriage of minors under the age of 18 is allowed (Article 14). Article 16 of the Family Code sets out that the guardian permitting the marriage should be the father, grandfather or an agent, indicating that only male relatives can operate as guardians. Where a guardian refuses consent the marriage may still be authorized by a judge (Family Code, Article 14). Early marriages are still practised in in Djibouti and are more common in rural areas (UNICEF, 2011, p.2).

c) Household responsibilities

The Family Code establishes that spouses share responsibility in all matters relating to the management of domestic affairs (Article 31). Article 31 of the Family Code outlines that spouses must show each other mutual respect, be faithful to each other, and provide each other mutual help and assistance. The husband is responsible for marriage expenses and the provision of the needs of his wife and children. The wife may voluntarily contribute to the marriage expenses if she has property (CEDAW, 2010). However, according to article 31 of the Family Code the wife must also "respect the prerogatives of the husband, as head of the family, and owes him obedience in the interest of the family". The Family Code further states that the husband and wife must fulfil their marital duties "in conformity with practice and custom" (Article 31).

According to the Family Code, men and women exercise their parental authority jointly in marriage, but in reality the Djiboutian society is a patriarchal one (CEDAW, 2010). Traditionally, the mother is responsible for the upbringing and development of children (CEDAW, 2010), whereas husbands take up the role of the head of household. Women are relegated to a subordinate role in family decision-making (CEDAW, 2010). The general view is that women should be confined to the private sphere where they ensure the well-being of home and family. This also applies to economically active women (CEDAW, 2010).

d) Divorce

According to the Family Code, a woman has the right to seek divorce under certain circumstances. A wife must either provide proof of injuries suffered (Article 39.2) or renounce her rights as a divorced woman, potentially resulting in the wife being ordered to pay damages to the husband (Article 39.3). A husband, in return, has the right to request divorce without needing to provide any justification (Article 39.1). In the case of divorce a woman cannot remarry for a period of three months. When she is widowed, she is not allowed to remarry for four months and ten days after the death (Articles 42 and 43). Divorce may take place only before a *ma'dhun*, a marriage official or a court (Article 38).

Women rarely initiate divorce due to lack of information on their rights and absence of legal assistance (CEDAW, 2010). Access to justice is further limited due to high illiteracy rates.

Following a divorce, parents continue to exercise joint parental authority (Family Code, Article 40; CEDAW, 2010). If a divorced woman receives custody of her children, she has the right to alimony and child support (UNICEF 2011).

Customary law, based on Sharia law, is deeply discriminatory in particular in the areas of succession, divorce and freedom of movement. Customary law reportedly continues to be applied in many divorce cases (Africa for Women's Rights, 2008).

e) Inheritance

The Constitution provides that Islam is the religion of the State. According to the CEDAW report submitted by the Djiboutian government in 2010, Sharia law is applicable in cases of inheritance (CEDAW, 2010). Sharia law states that a woman's inheritance share is half that of a man's and a girl's share is half that of a boy's (CEDAW, 2010). The CEDAW Committee indicated that provisions regulating inheritance cannot be amended as they are rooted in the country's higher socio-cultural and religious values (CEDAW, 2011; CEDAW, 2010). Women also face discrimination under customary practices related to inheritance, divorce, and freedom of movement (Freedom House, 2016).

2. Restricted Physical integrity

a) Violence against women

There is no comprehensive law addressing violence against women. Djibouti was set to review its legislation on violence against women in 2011 (CEDAW, 2011). However, there is no update available on progress made. The Ministry for the Advancement of Women and Family Planning (MPF) is responsible for promoting the rights of women and have been responsible for the distribution of guides for judges and lawyers and for civil society on legal responses and victim assistance. The MPF started the development of a National Gender Policy at the end of 2010. The ministry is also involved in implementing the National Strategy for Integration of Women in Development. The CEDAW committee reports that the capacity and resources of the MPF have not been strengthened adequately, especially at the local level, to ensure the effective coordination and implementation of these policies and strategies (CEDAW, 2011).

The *Union Nationale des Femmes Djiboutiennes* (UNFD) is involved in the provision of assistance to victims of gender-based violence. In 2007, a support, information and counselling centre was established at UNFD headquarters providing women and girl victims of violence with assistance on administrative and legal procedures (CEDAW 2010). In reality, cases of gender-based violence are rarely reported, but instead are usually settled within the family (CEDAW, 2011).

b) Domestic violence

The Penal Code prohibits "torture and barbaric acts" against a spouse or co-habiting partner and criminalises this act with imprisonment up to 20 years (Articles 324 and 325). When accompanied by

sexual assaults other than rape, the torture or barbaric acts are punishable with imprisonment up to 20 years (Article 326). There is no law against spousal rape.

Domestic violence is reported to be widespread and rarely expressed publically. Rather, violence in the domestic sphere is often dealt with either within a family or traditional context (UNICEF, 2011).

c) Rape

Under the Penal Code (2011), rape is a crime punishable with sentences of up to 10 years in prison (Article 343). The definition of rape includes any act of sexual penetration of any kind committed on another by violence, coercion, threat or surprise (Penal Code, Article 343). In case of aggravated rape, the crime is punishable with up to 20 years imprisonment, such as when committed on vulnerable persons because of age, illness or disability, physical or psychological conditions, pregnancy, abuse of authority, when committed with the use of a weapon, gang rape or on a child younger than fifteen years (Penal Code, Article 344). When a person dies as a result of rape (whether intentional or not) or when rape is accompanied or followed by torture or acts of barbarism, the perpetrator may be imprisoned for life (Article 345).

d) Sexual harassment

Sexual assault is punishable with up to twenty years of imprisonment when the act includes torture and barbaric acts (Penal Code, Article 326). The CEDAW Committee reports that disputes concerning violations of women's rights, especially cases of sexual violence, are often settled through traditional justice mechanisms. The settlement may include payment of a symbolic amount to the victim's family without consulting or compensating the victim (CEDAW, 2011).

e) Female genital mutilation

Female genital mutilation (FGM) is a common practice in Djibouti, despite the government's efforts to combat the practice. Carrying out FGM is illegal. An amendment in 2009 of article 333 of the Penal Code provided a definition for FGM and included criminal penalties for failure to report the practice. In the same year, the Ministry for the Advancement of Women initiated legislation enabling associations working to combat FGM to bring a claim for damages on behalf of victims unable to lodge a complaint (Penal Code? Article 7). However, there are multiple reports that Article 333 of the Criminal Code punishing FGM has never been applied (CEDAW, 2010; Africa for Women's Rights, 2008; Central Intelligence Agency, 2016). In reality, cases of FGM are generally not reported, prosecuted nor punished.

The Ministry for the Advancement of Women formulated a National Strategy for the Full Abandonment of All Forms of Excision (SNAE), formulated in collaboration with UNICEF for the period 2007-2011, including communication and social mobilization, education, support and institutional capacity-building (CEDAW, 2010). Several information and sensitization campaigns have been carried out, some involving religious and community leaders (CEDAW, 2010). There is no information available about a follow-up strategy.

Despite the above-mentioned efforts FGM persists in Djibouti. The practice is traditionally operated on girls between 7 and 10 years old. Girls are subjected to three types of FGM. Type one, also known

as *Sunnah*, consists of removing parts of flesh; type two, or excision, consists of cutting without the removal of flesh; and type III consists of sewing up the vaginal area. Reports indicate type one continues to be widely practised, especially in rural areas of the country (Africa for Women's Rights, n.d.). In addition, the practice continues because men refuse to associate with or marry non-excised girls (CEDAW, 2010).

Despite information campaigns, women are not fully aware of the health-related consequences of FGM. FGM often leads to obstetric complications, caesarean sections, excessive bleeding, prolonged labour and maternal death (CEDAW, 2011; Central Intelligence Agency, 2016; Africa for Women's Rights, n.d.). Health care in Djibouti in general, and particularly outside the capital, is limited due to poor infrastructure, shortages of equipment and supplies, and a lack of qualified personnel (Central Intelligence Agency, 2016).

f) Abortion

The Penal Code (2011) criminalizes abortion (Article 447-450). A pregnancy may be legally interrupted by a physician for therapeutic purposes, in conformity with the Public Health Law. The Code, however, does not specify when abortions are considered therapeutic. A person who performs an abortion or attempts to do so is liable to two years' imprisonment and payment of a fine of DF 500 000 whether the pregnant woman consented or not. A woman who attempts to procure her own abortion or consents to an abortion is liable to six months' imprisonment and payment of a fine of DF 100 000. If the person performing the abortion regularly performs abortions, the punishment is five years' imprisonment and payment of a fine of DF 2 000 000. A physician or health professional who promotes or performs abortion is subject to the same penalty (Penal Code, 2011).

More

Djibouti is a party to a number of international instruments relating to the protection of women and children and the suppression of trafficking in and exploitation of human beings (CEDAW, 2010). Djibouti passed a Human Trafficking Act in 2007 (CEDAW, 2010), criminalizing engagement in human trafficking with imprisonment from two to five years and a fine of DF 500 000 to DF 1 million, or by either penalty (CEDAW, 2010). Despite the legal framework in place, authorities reportedly do not investigate or prosecute forced labor crimes, sex trafficking offenses, or officials complicit in human trafficking (Central Intelligence Agency, 2016).

Djibouti is a transit, source, and destination country for men, women, and children subjected to forced labor and sex trafficking, economic migrants from East Africa attempting to travel across the sea to Yemen and other Middle East locations; and asylum seekers and refugees. All are vulnerable to exploitation in Djibouti (Central Intelligence Agency, 2016). There are reports of women and girls being forced into domestic servitude or prostitution and Djiboutian and foreign children being forced to beg, to work as domestic servants, or to commit theft and other petty crimes (Central Intelligence Agency, 2016). With the escalation of the ongoing Yemen conflict, Yemenis began fleeing to Djibouti in March 2015 (Central Intelligence Agency, 2016). For over 20 years, Djibouti has been hosting refugees and asylum seekers from Somalia, Ethiopia and Eritrea at camps (Central Intelligence Agency, 2016; CEDAW, 2010). Official round-ups, detentions, and deportations of non-

Djiboutian residents, including children without screening for trafficking victims remained routine (Central Intelligence Agency, 2016).

3. Restricted access to productive and financial resources

For the period of 2003-2010, the government put in place a National Strategy for the Integration of Women in Development. However, there is no information about a follow-up strategy. The 2003-2010 strategy together with its action plan aimed to strengthen women's participation in political and economic life, improving maternal and child health, and increasing women's and girls' access to education and literacy (CEDAW, 2011).

a) Secure access to land and assets

The Family Code allows women full capacity to administer their property (Article 32, 101 and subsequent articles). The Constitution guarantees rights to property for women (Article 12). Despite the legal framework, women often find themselves deprived of inheritance in favour of the men in their families (Africa for Women's Rights, 2008). Women access to land and assets is limited as women belong to the poorest segment of the country's population and often have no property of their own (CEDAW, 2010). Women also face discrimination under customary practices related to property matters (Freedom House, 2016).

b) Secure access to formal financial resources

The current law makes no distinction between men and women with regard to financial services, access to bank accounts, loans and other financial credit (CEDAW, 2010). Women are free to borrow money from any financial institution, provided they fulfil the conditions set by the institution in question (CEDAW, 2010). Women have the right to conclude contracts in their own name in all spheres (CEDAW, 2010).

Small loans and microfinance schemes such as the Social Development Fund (FSD) and the *Caisse populaire d'épargne et de crédit* (CPEC) have been set up to encourage women's economic participation in the formal economy (CEDAW, 2010; UNICEF, 2011). The *Union Nationale des Femmes Djiboutiennes* is involved in poverty reduction activities through microcredit, income-generating activities, and job training (CEDAW, 2010). In practice, however, women encounter a series of obstacles to open bank accounts and access credit, often lacking sufficient guarantees for seeking credit from appropriate institutions (CEDAW, 2010). In addition, women are traditionally excluded from access to economic resources and to the banking system under customary traditions (CEDAW, 2010).

c) Workplace rights

Both the Labour Code (2004) and the General Civil Service Regulations Act guarantee equal access to employment for men and women (Article 15). In theory, women benefit from the same rights as men with respect to treatment, remuneration and allowances received in connection with work performed (Labour Code, Article 137). Despite the legal framework providing equal treatment, women have fewer employment opportunities and are paid less than men for the same work

(Freedom House, 2016). Article 137 of the Labour Code enshrining the principle of equal pay for work of equal value is reportedly not enforced (Freedom House, 2016). There is no legislation prohibiting sexual harassment in the workplace.

Women are protected during their maternity period and receive a minimum 14-week period of maternity leave (Labour Code, Article 113; General Civil Service Regulations Act, Article 41.6). The father receives a three-day period of leave (CEDAW, 2010). There is no parental leave. The Code provides that women are also entitled to the full amount of pay during their maternity leave. Half of the maternity pays is paid by the government and half by the employer (Labour Code, Article 115). Mothers are entitled to breastfeeding breaks for a 15-month period from the time when they resume work (Labour Code, Article 116). Despite the legal provisions in place to protect women during maternity, reports indicate that women are dismissed during or following pregnancy (Freedom House, 2016).

The Ministry for the Advancement of Women has designed a programme for the promotion of female entrepreneurship, improving opportunities for access to information, training, support, advice, business-development services, the market and financing (CEDAW, 2010). Regardless of efforts to create income-generating opportunities for women, reports indicate that discrimination against women in the labour market is high (Freedom House, 2016). Women face difficulties accessing employment and face obstacles preventing them from undertaking formal income-generating activities (CEDAW, 2010). Instead, women are most often employed in insecure and vulnerable jobs in the informal sector (CEDAW, 2010). As a result, many women engage in economic activities outside the legal framework and have no access to social protection (CEDAW, 2010).

4. Restricted Civil liberties

a) Citizenship rights

Djibouti grants women equal rights with men to acquire, change or retain their nationality, as well as with respect to the transmission of their nationality to their children (CEDAW, 2010). The Nationality Code (2004) respects the equality of the sexes with regard to nationality. Women have the right to transfer their nationality to their children (Nationality Code, Articles 4 and 5). Article 12 of the Nationality Code provides that “an alien individual who enters into marriage with a spouse of Djiboutian nationality may not seek Djiboutian nationality until after 10 years of conjugal life”. In this article, no distinction is made between men and women.

Women have the right to travel and move freely without restriction, and to choose where to live. A woman does not need the permission of her husband or guardian in order to obtain a passport (CEDAW, 2010). However, under customary law, women reportedly do not have the right to travel outside the country without the authorisation of an adult male relative (Africa for Women’s Rights, 2008).

According to UNICEF data, 92% of children under 5 have their birth registered. There is no information whether women have the same rights as men to register the birth of their child.

b) Voting

Women in Djibouti gained the right to vote in 1946. In 1986 women received the right to stand for election. Article 5 of the Constitution provides that: “All Djiboutian nationals of both sexes who have reached majority and enjoy civil and political rights shall be eligible to vote under the conditions determined by law.” The Constitution also provides that: “Citizens of the Republic of both sexes over the age of 23 years shall be eligible.” (CEDAW, 2010). In May 1999, the first female minister was appointed as Minister Delegate of the Prime Minister, in charge of the Advancement of Women, Family Welfare and Social Affairs (CEDAW, 2010).

c) Political voice

The introduction of the Quota Law (2002) provided that in legislative elections, political parties presenting candidate lists should include a proportion of each sex equivalent to at least 10% of the seats to be filled (Article 2). In 2008, a decree was implemented aimed at achieving proportional representation of at least 20% for both sexes in senior civil service posts. This requirement has not been enforced. The number of women holding positions of responsibility has consequently increased in the majority of ministerial departments (CEDAW, 2010).

Women’s participation in political and public life remains weak in decision-making positions, in the local administration, and the diplomatic service (CEDAW, 2011). The principle of quotas has not been respected in regional and municipal elections (CEDAW, 2010).

d) Access to justice

Men and women are equal before the law and have access to justice without discrimination. The protection of women before the courts and in public service settings are the same as for men (CEDAW, 2010). According to Freedom House, a lack of resources often delays legal proceedings and security forces frequently make arrests without a proper decree from the judiciary (Freedom House, 2016). The Djiboutian government admits that there are major obstacles to enforcing the laws aimed at protecting women's rights (CEDAW, 2010). Women face barriers in accessing justice resulting from a lack of awareness of the legal framework, structural difficulties, extreme poverty in the country and the lack of resources. The impact of traditions and stereotypes on women's role in society further aggravate these barriers in accessing justice (CEDAW, 2010).

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