

Comoros

1. Discrimination in the family

a) Overarching legal framework for marriage

The legal system in Comoros recognises three sources, namely the domestic law, Islamic law and customary law (CEDAW, 2012). The law does not provide women with the same rights as men to enter into marriage (Family Code, art. 21). Marriage is based on a guardianship system by which a woman is represented by her matrimonial guardian (the *wali*) to enter into marriage (Family Code, art. 21). The matrimonial guardian is the father, the paternal grandfather, the brother or paternal uncles or cousins (Family Code, art. 22). The Family Code further stipulates that marriage is based on the consent of both spouses and the *wali's* consent (art. 17, 20 & 23). If the *wali* strongly opposes the marriage of a woman placed under his guardianship, the woman can go to a judge (Family Code, art. 24). If the marriage was concluded without the consent of both spouses, it can be annulled (Family Code, art. 20). Furthermore, the Family Code stipulates that the marriage is necessarily Muslim and can only be concluded between Muslims (art. 16).

The exchange of a dowry from the husband to the wife is included and regulated in the Family Code (art. 28-32). Polygamy is permitted (art. 49). A waiting period before re-marrying is mandatory for women after the death of her husband or after divorce (Family Code, art. 79). The length of the waiting period is determined by menstruation, menopause, pregnancy or widowhood (Family Code, art. 79). Informal or de-facto unions are not regulated by law.

b) Child marriage

The legal age of marriage for women and men is 18 years old (Family Code, art. 14). A judge can authorise marriage below the legal age in extenuating and legitimate circumstances and if both spouses consent (Family Code, art. 15). There are no public measures to generate social support for the enforcement of laws on the minimum age of marriage and there are no legal sanctions for those facilitating a marriage of an individual who is under the minimum age of marriage. The Penal Code includes sanctions for anyone engaged in a marriage celebrated according to customary law who attempts or consumes the marriage with a child below the age of 13 years old (art. 299).

The CEDAW Committee (2012) stresses the persistence of practices such as forced and early marriages. The US Department of State (2016) also reports on the prevalence of marriage of girls before they reach 18 years old.

c) Household responsibilities

The law does not provide women with the same rights as men to be recognised as the head of household (Family Code, art. 54). Nonetheless, women are provided with the same rights as men to be the legal guardian of their children during marriage and the same rights and responsibilities towards their children (Family Code, art. 106).

The law does not provide women with the same rights as men to be legal guardians of their children in informal unions, as when a child is born outside of marriage, filiation is established only with regards to the mother and the father does not have any responsibility towards the child and is considered unknown (Family Code, art. 99 & 100).

Additionally, the law does not provide married women with the same rights as married men to choose where to live, as the husband chooses where to live or the parents of the woman choose where she will live upon her marriage (Family Code, art. 56).

The CEDAW Committee (2012) notes the persistence of stereotypical roles and responsibilities assigned to women and men within families and in society at large. Men tend to be considered the head of households and women tend to be considered only in their relations to men in the family, as wife, sister, daughter or niece (CEDAW, 2012). Nonetheless, estimations show that 40% of families are headed by women (Emery, 2013). But it appears that strictly defined gender roles and stereotypical responsibilities are applied (Emery, 2013).

d) Divorce

The law does not provide women with the same rights as men to initiate divorce (Family Code, art. 57). Repudiation is allowed under article 57 of the Family Code which stipulates that the husband can alone take the decision to breakdown the marriage without reason which is called *twalaka*. A wife can file for divorce in case of lack of maintenance, absence of the husband, mental or serious illness or faults committed by the husband (Family Code, art. 72). If a wife wishes to breakdown the marriage without a legal motive, the spouses can decide on an agreement to divorce; however, the wife has to compensate the husband financially and the divorce can be pronounced only once the allowance has been paid by the wife (Family Code, art. 78).

The law provides women with the same rights as men to be the legal guardians of their children after divorce (Family Code, art. 86). In case of a *twalaka*, the woman is entitled to housing by the husband (Family Code, art. 88). The same rights and responsibilities are not granted to women and men with regards to their children after divorce (Family Code, art. 92). The mother is privileged with regards to custody rights until the children are seven years old; after that age, the children can choose with whom he wishes to live (Family Code, art. 92).

It is reported that according to customary law, women are entitled to property rights in case of divorce or separation and the family home and land is usually granted to women (US Department of State, 2016). However, they do not hold usufruct rights over that land and their maternal uncles or brothers have the right to exploit the land and property (Emery, 2013). According to Islamic law, a divorced woman or a widow who does not have children is expected to return to her family and leave the family home (Emery, 2013). The African Development Bank (2010) stresses that repudiation and divorce are associated with stigma and the blame is mostly put on women. Additionally, the African Development Bank (2010) reports on a study done in 2006 which establishes that women face material and financial violence after divorce. The CEDAW Committee (2012) stresses that alimonies are not systematically paid, which further marginalise divorced women who have the de facto responsibility to bring up their children.

e) Inheritance

In Comoros, inheritance laws result from a combination of Islamic laws and customary laws (Carboneill, 2002). Various inheritance systems are applied on the different islands (Emery, 2013). On the island of Grand Comoros, land and property are passed down the maternal line (Emery, 2013). For instance, the customary law *Magnahoule*, which favours a matrilineal system of inheritance is applied; however, the administration of the property and land inherited by women is vested to men in the family (Carboneill, 2002). In other parts, religious Islamic law govern inheritance practices according to patrilineal inheritance system (Emery, 2013). Islamic law establishes female and male heirs, however there is a substantial inequality between them as a female heir receives half of a male heir's share (Carboneill, 2002).

2. Restricted Physical integrity

a) Violence against women

The Law on the Repression and Prevention of Violence against Women was adopted in 2014 and it includes specific provisions for investigation, prosecution and punishment of the perpetrator as well as protection and support services for victims (World Bank, 2016). A *Road Map 2016-2018: A National Action Plan to Combat Violence against Women* was also elaborated (Comores-Infos, 2015).

The CEDAW Committee (2012) stresses that “violence against women is considered a taboo and therefore a culture of silence prevails”. There is a general lack of information and data on violence against women, the number of prosecution and victims' services (CEDAW, 2012).

b) Domestic violence

Under the Law on the Repression and Prevention of Violence against Women, domestic violence is considered a criminal offense (World Bank, 2016). The legislation covers domestic violence from former partners and within the family and includes physical, sexual, psychological and economic violence (World Bank, 2016). The Law additionally includes provisions regarding the prevention of domestic violence, victims' care and awareness-raising and education campaigns (Actu-Comores, 2014). The *Road Map 2016-2018: A National Action Plan to Combat Violence against Women* includes domestic violence as one of its domains of action (Comores-Infos, 2015).

According to a study done in 2006, women reported being the victims of psychological and physical violence usually from their own family members or in-laws (African Development Bank, 2010). It is reported that domestic violence cases are rarely reported and that customary justice systems are mostly used to address those cases (US Department of State, 2016).

c) Rape

The Penal Code addresses sexual violence under article 317 and criminalises rape under article 319. Rape is punishable of imprisonment of five to ten years (Penal Code, art. 319). The Law on the Repression and Prevention of Violence against Women includes provisions strengthening the punishment of rape (US Department of State, 2016). The legal framework is based on lack of consent and does not require proof of physical force, resistance or penetration; as the Law on the Repression and Prevention of Violence against Women stipulates that considering that rape and domestic

violence often occur in private places, oral testimonies of victims alone can lead to conviction (Comores-Infos, 2015a). Marital rape is not criminalised under the Penal Code, but a wife can file a complaint (World Bank, 2016). Increased penalties for aggravated forms of rape and sexual violence are included in the legislative framework (Penal Code, art. 320). Abduction of a minor is additionally punishable by the Penal Code of two to five years of imprisonment and a fine, however when the minor marries his/her abductor the sanction can only be applied once the marriage is annulled upon the request of the appropriate persons (art. 347).

The Road Map 2016-2018: A National Action Plan to Combat Violence against Women includes sexual violence under its priorities (Comores-Infos, 2015). Additionally, the Law on the Repression and Prevention of Violence against Women includes provisions for assistance to be provided to victims, notably legal assistance, as well as awareness-raising and education campaigns (Actu-Comores, 2014). The African Development Bank (2010) reports on a hotline, established by the Government, for children victims of violence.

Rape is seldom reported and silence seems to be the norm (African Development Bank, 2010). Exposure to public prosecution or family settlements is feared by families (African Development Bank, 2010). Both processes usually entail the payment of a fine as damages and amicable settlement (African Development Bank, 2010). The US Department of State (2016) also reports that many cases of rape are dealt within families through customary means.

It is difficult to assert the situation with regards to rape and sexual violence in Comoros due to silence from the victims, lack of reporting, lack of data and resort to informal settlement processes from families (African Development Bank, 2010).

d) Sexual harassment

Sexual harassment is covered under the Labour Code and includes civil remedies (art. 2). However, the legislative framework only covers sexual harassment in the workplace and does not cover educational establishments, sporting establishments, public places or cyber harassment. According to Freedom House (2016), sexual harassment in the workplace is widespread, however the situation is hard to assess due to lack of reporting.

e) Female genital mutilation

No provision regarding the criminalisation of female genital mutilation could be located in the legislative framework. No sources indicate that this is a practice of concern in Comoros.

f) Abortion

Abortion on request is not legal in Comoros and a woman who seeks an abortion is punishable of imprisonment of six months to two years and a fine (Penal Code, art. 304). A medical legal abortion can be performed only in cases of utmost danger observed by at least two doctors (Penal Code, art. 304).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

Regarding land, property and other non-land assets, married women are provided with the same rights as married men to own, use, make decisions concerning and use it as collateral (Family Code, art. 54 & 83). Unmarried women are provided with the same rights as unmarried men to own, use, make decisions and use as collateral (Constitution, Preamble). Additionally, the law provides women with the same rights as men after divorce or separation to own, use, make decisions and use as collateral (Family Code, art. 83). Marital property is administered by the husband (Family Code, art. 54). No restrictions were located in the legal framework regarding joint land titling for land used or acquired by married couples or informal unions.

Land rights in Comoros result from a combination of customary law, Islamic law and formal law (inherited from the French legal system). It is unclear how land rights are managed in Comoros and which legal system takes precedence over the other. Land is acquired either by inheritance or acquisition. Due to the economic struggles faced by women, inheritance is usually the only way they can access land. According to customary law and the matrilineal rule, girls, especially the eldest girl, are privileged with regards to the inheritance of land and built-up areas (African Development Bank, 2010). Customary law establishes that women inherit land and property, however they generally do not have usufruct rights on the land they own (African Development Bank, 2010). Their husband, maternal uncle or brothers tend to enjoy the usufruct rights (African Development Bank, 2010). Matrilineal inheritance rights are not uniformly endorsed across the archipelago and it appears that this form of customary law exists on Grande Comore and Moheli (US Department of State, 2016). By Islamic law, which is another source of recognised law in Comoros, boys are privileged in comparison to girls and the inheritance system is patrilineal (African Development Bank, 2010).

It is reported that “the absence of a land registry and the customs and traditions of the matrilineal system prevent rural women from using their ownership of land and other property to access financial credit and capital” (CEDAW, 2012). Furthermore, the CEDAW Committee (2012) reports that rural women face poverty and discrimination and lack access to basic services. Additionally, reports show that women’s participation in community decisions is low and they are not involved in decision-making institutions (formal, informal or customary) (CEDAW, 2012).

b) Secure access to formal financial resources

The law provides married women with the same rights as married men to open a bank account at a formal financial institution (Family Code, art. 55). Additionally, married/unmarried women are provided with the same rights as married/unmarried men to obtain credit (Family Code, art. 55 & Constitution, Preamble).

The CEDAW Committee (2012) reports that the Government has established an Office of Female Entrepreneurship, which has a small loan programme targeting women.

Women have limited access to credit at formal financial institutions, due to the difficulty to comply with loan requirements (African Development Bank, 2010). Nonetheless, the African Development

Bank (2010) reports that micro-financial institutions have implemented measures to increase women's access to credit.

c) Workplace rights

The law mandates non-discrimination on the basis of sex in employment, covering recruitment, hiring, terms and conditions, promotions, training and termination (Labour Code, art. 2 & 44). The law mandates equal remuneration for work of equal value (Labour Code, art. 104). The law allows women to work the same night hours as men (Labour Code, art. 121).

Women are allowed 14 weeks of paid maternity leave with full wages paid by the employer (Labour Code, art. 125). Women's employment security is protected when they are on maternity leave (Labour Code, art. 125). Workers are allowed ten days off for work for special family events with full wages paid by the employer (Labour Code, art. 135). The law does not mandate paternity or parental leave. Women do not need permission from their husband or legal guardian to choose a profession or register a business (Family Code, art. 55).

The National Policy on Gender Equality and Equity includes a strategic objective regarding the involvement of women in economic activities (Union of Comoros, 2007). Notably, the National Policy sets to enhance income in agriculture and in the informal economy as well as to increase women's participation at decision-making levels (Union of Comoros, 2007).

The CEDAW Committee (2012) stresses the feminisation of temporary work, informal work and unemployment. The African Development Bank (2010) similarly reports that women are mostly employed in precarious and informal jobs. Women's employment is concentrated in the agriculture sector (African Development Bank, 2010). Additionally, the African Development Bank (2010) reports that the low level of formal employment is linked to the roles and responsibilities of women in Comorian society as housewives.

Moreover, the CEDAW Committee (2012) highlights that women entrepreneurs face barriers, such as difficult access to credit and loans and lack of managerial skills. Women entrepreneurs, who autonomously manage a business, also face social pressure and stigma with regards to their expected roles and responsibilities within society and the family (CEDAW, 2012). Freedom house (2016) reports on economic inequality regarding women, due mostly to limited access to education and a lack of opportunities in income-generating activities.

4. Restricted Civil liberties

a) Citizenship rights

Married women are not provided with the same rights as married men to acquire, change or retain their nationality (Nationality Code, art. 15 & 30). Additionally, the law does not provide married women with the same rights as married men to confer nationality to their spouse (Nationality Code, art. 15 & 30). A foreign man who marries a Comorian woman has to apply for naturalisation, under the standard procedure, with reduced conditions (the ten years' residence requirement is reduced to five years in this case) (Nationality Code, art. 29 & 30). However, a foreign woman who marries a

Comorian man automatically acquires citizenship (Nationality Code, art. 15). She may declare before the marriage that she refuses the Comorian citizenship (Nationality Code, art. 16).

Nonetheless, unmarried women are provided with the same rights as unmarried men to acquire, change or retain their nationality (Nationality Code, art. 27, 28, 37, 38 & 51). Moreover, the law provides married/unmarried women with the same rights as married/unmarried men to confer nationality to their children (Nationality Code, art. 10 & 11) and to register the birth of their children (Law on Civil Status, art. 34). Delayed registration is permitted with a judgment from the tribunal (Law on Civil Status, art. 31 & 32).

The Constitution does not recognise and prohibit multiple or intersectional discrimination but recognises the equality of all in rights and duties without distinction of sex, origin, race, religion or belief (Preamble).

The law provides married/unmarried women with the same rights as married/unmarried men to apply for identity cards (Law on Identity Cards, art. 2) and to apply for passports (Habari Za Komori, n. d.). Additionally, the law provides women with the same rights as men to acquire passports and other travel documents for their minor children (Habari Za Komori, n. d.).

The law provides inter alia married/unmarried women with the same rights as married/unmarried men to travel outside the country through the Preamble of the Constitution which recognises the equality of all without distinction of sex and guarantees the freedom and security of all.

b) Voting

Married/unmarried women are provided with the same rights as married/unmarried men to vote (Constitution, art. 4). There is no legal discrimination regarding voting rights and there is no information on practices that might restrict these rights.

c) Political voice

The law provides women with the same rights as men to hold public and political office, including legislature, executive and judiciary (Constitution, art. 19, 13 & 28). There are no legal quotas nor special measures to promote women's political participation at the national and local level. Additionally, there are no incentives for political parties to include women on candidate lists for national or local elections.

The National Policy on Gender Equality and Equity plans to implement measures to ensure an equal participation of both sexes within decision-making bodies, notably through training and education, awareness-raising, monitoring within public bodies and strengthening institutional mechanisms with regards to gender equality (Union of Comoros, 2007).

The CEDAW Committee (2012) reports on the underrepresentation of women in political processes, due notably to stereotypical roles and responsibilities assigned to women and men as well as the belief that motherhood and pregnancy represent a constraint for women to attain decision-making positions. Furthermore, the CEDAW Committee (2012) highlights that women in politics face the risk of being the victims of violence from their husband or in-laws, if they engage in a political career without their consent.

d) Access to justice

The law provides married/unmarried women with the same capacity as married/unmarried men to sue and to be sued (Constitution, Preamble). Additionally, a married/unmarried woman's testimony carries the same evidentiary weight in court as a married/unmarried man's in all types of court cases such as civil, criminal, family court or tribunal (Constitution, Preamble & Code of Penal Procedure, art. 101 & Code of Civil Procedure, art. 206).

The National Commission on Human Rights and Freedoms was established in 2006 (Law establishing a National Commission on Human Rights and Freedoms, art. 1). The Commission dispenses legal aid, has the capacity to receive and resolve complaints, monitors compliance with international treaties and leads education and public awareness campaigns (Law establishing a National Commission on Human Rights and Freedoms, art. 6 & 8). The General Office for Solidarity and Gender Advocacy is additionally a body dedicated to gender equality (CEDAW, 2012). However, the CEDAW Committee (2012) reports on the lack of adequate financing allocated and the lack of operational and managerial capacity of the General Office.

The National Policy on Gender Equality and Equity sets to adopt measures with regards to gender equality in legislation and policies as well as to coordinate state and non-state bodies in charge of gender equality, notably through systematic gender mainstreaming within national legislation, assigning a budget state bodies for gender equality, and ensuring a better coordination with local authorities, unions, political parties and civil society organisations (Union of Comoros, 2007).

It is reported that concerning cases of sexual violence and domestic violence, families and communities often pressure women to settle amicably or to recourse to traditional justice systems (US Department of State, 2016). Furthermore, reports show that in cases of domestic violence, an arrest may be made but the cases rarely go through the formal justice system afterwards (US Department of State, 2016).

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