

Syrian Arab Republic

1. Discrimination in the family

a) Overarching legal framework for marriage

The legal system in the Syrian Arab Republic is based on French, Ottoman and Islamic Law. The Sharia Personal Status Law (PSL) regulates family affairs (including inheritance, marriage, divorce and child custody) for the majority of the population, namely the Sunni, Shia and Alawite Muslims. For Christian and Jewish women, church and rabbinical law govern personal status (CEDAW Shadow Report, 2013, p.2). Regarding customary marriages (performed outside the court), the Personal Status Law requires registration of marriage contracts, including customary marriage contracts, which are exempt from fees (CEDAW 2012, p.85).

An attempt to introduce a unified personal status code in 2009 failed due to criticisms from women's rights activists (who saw the new law as retrogressive) and from Christians (who argued that it would remove authority from their respective churches (Kelly and Breslin (eds.) (2010) pp. 461, 466). Amnesty International notes, however, that many of the religious courts handling family affairs have stopped operating due to the current situation of unrest (CEDAW Shadow Report, 2013, p.2).

Although marriage requires the consent of both parties (Arts 1, 6, 7 of the PSL), women cannot marry without the consent of their male guardian (PSL, Article 16-18), and it is the guardian who signs the marriage contract (PSL, Articles 21-24; CEDAW Shadow Report, 2013, p.5). Marriage contracts include a 'special conditions' section, which provides space for the spouses to add their own conditions (e.g. relating to the pursuit of education after marriage or employment outside the home), and if these conditions are approved and signed by both parties, the couple is legally obligated to apply them during marriage (CEDAW Shadow Report, 2013, p.5). Many women are, however, unaware of this option and see the contract only after the marriage ceremony has been performed (CEDAW Shadow Report, 2013, p.6). In addition, most marriages are arranged, and women may face pressure to agree to a marriage for financial or social reasons. Moreover, Muslim women do not have the right to marry outside the faith but there are no such restrictions on Muslim men (PSL, Article 48(2)).

Polygamy is permitted under Islamic Sharia law, which allows Muslim men to take up to four wives. Syrian law gives a judge the right to prohibit men from taking second (or subsequent) wives if they deem the man to be incapable of providing adequate financial support, but does not require the consent of the first wife (Kelly and Breslin (eds.), 2010, p.466). Amendments to the PSL (Articles 17, 67 and 68) in 1975 intended to make it more difficult for a man to have multiple wives by requiring a husband to have the financial ability to support an additional wife and a Sharia justification, the wife's consent to share a marital home with a co-wife, and equal housing for all wives. However, in spite of these efforts to limit polygamy, it is still practiced in Syria, particularly in areas where government control is weak or non-existent. In addition, there are reports that husbands sometimes threaten to divorce their wife unless she consents, rendering the legislative safeguards less effective (ILAC, 2017).

b) Child marriage

Article 16 of the Personal Status Law sets the legal age of marriage at 17 years for women and 18 years for men, but judges may authorise marriages at younger ages (Arts. 18 and 26): as low as 13 years for girls and 15 years for boys (The World Bank, 2015). Judges must use their discretion to assess whether the children are “physically fit” for marriage, and the presence and approval of their respective guardians are required (CEDAW Shadow Report, 2013, p. 6).

Rates of early marriage are reportedly high, particularly as displaced and refugee families endeavour to marry young daughters as a safeguard against rape, a means of covering up the latter, or in response to economic pressures (Freedom House, 2016). Child marriage is prohibited by the PSL (Articles 48 and 51) but there are no penalties for authorizing or knowingly entering into child or early marriage (World Bank, 2015).

c) Household responsibilities

Women technically have the same rights as men to be recognised as head of the household (Civil Status Code, Legislative Decree 26/2007, Article 61a) but marriage is conditioned upon obedience. If a wife is disobedient to her husband, she loses her right to maintenance for as long as she is disobedient (PSL, Article 74). Unmarried women do not, generally, live on their own, as this is considered dangerous and improper, while married women must defer the choice of domicile to their husbands, who have decision-making power to this regard (PSL, Art. 66).

Syrian personal status law also discriminates in the area of guardianship over children during marriage, granting fathers more rights than mothers. According to the personal status law, only men can assume the role of guardianship (*wilaya*) over their own and other’s children (Personal Status Law, art. 170). Guardianship includes the exercise of disciplinary authority, the provision of medical treatment, education, career guidance, and marriage consent (Personal Status Law, art. 170). Women are instead regarded as custodians (*hadean*), charged with fulfilling the basic needs of their children (PSL, Articles 137-140, and 147). These include teaching them how to drink and eat unassisted, educating them about other bodily functions, and teaching them how to perform ablutions or ritual self-purification unassisted.

d) Divorce

Muslim men can repudiate (divorce unilaterally and unconditionally; *talaq*) their wives, but women do not have the same right (CEDAW Shadow Report, 2013, p.7). Women may seek a divorce according to a narrower set of criteria (e.g. the husband’s illness or desertion), or can obtain a ‘*khula*’ divorce if they renounce their dowry (CEDAW Shadow Report, 2013, p.7). The Personal Status Law also contains articles that permit divorce on the grounds of violence (Article 112; CEDAW, 2012, p.83). While men are only required to inform the authorities of the decision to divorce, women must initiate divorce proceedings in the courts (CEDAW, 2014).

In the event of divorce, Muslim women are usually granted custody of sons until they are 13 and daughters until they are 15 (although the father retains guardianship), and lose custody if they remarry (CEDAW Shadow Report, 2013, p. 3). Custody then transfers to the paternal side of the family. The PSL also stipulates that the father, as guardian, has the responsibility to provide financially for the

children's needs and that, in his death or absence, this responsibility falls on the father's father or brother (CEDAW, 2014). Under the Catholic personal status law (introduced in 2006), both parents have equal guardianship rights over children during marriage, although if a couple separates, the father is offered custody first, and then the mother (UNICEF, 2011, p.2)

e) Inheritance

Sharia law and the Personal Status Law provides for detailed and complex calculations of inheritance shares. Daughters and female surviving spouses do not have the same rights as sons and male surviving spouses to inherit land and non-land assets (PSL, Articles 297 and 268, and broadly, Articles 260-308). A woman may inherit from her father, mother, husband or children, and under certain conditions, from other family members. However, her share is generally smaller than a man's entitlement (Kte'pi, 2013, p.1181). A daughter, for example, inherits half as much as a son and while husbands inherit half of their deceased wife's property, a wife only inherits one-quarter of her deceased husband's property.

Although legal heirs cannot be disinherited, nor can their share be reduced at the will of the deceased, in practice widows without children often receive nothing at all (Kte'pi, 2013, p.1181; CEDAW, 2014). Non-Muslim women married to Muslim men are not entitled to any inheritance unless they convert (Kelly and Breslin (eds.), 2010, pp.470). In rural areas in particular, many women are not aware of their inheritance rights and often transfer their entitled share to a male relative in order to keep property within the family (CEDAW, 2014). Sharia inheritance law applies to all other religious groups, with the exception of Catholics (following the introduction of a Catholic personal status law in 2006, under which women and men enjoy equal inheritance rights) (Kelly and Breslin (eds.), 2010, pp.468, 471; CEDAW, 2014).

2. Restricted Physical integrity

a) Violence against women

Information on physical integrity in the Syrian Arab Republic must be contextualized within the current conflict, where evidence points to the systematic sexual assault of women and girls by combatants and the widespread use of rape as a 'weapon of war' (CEDAW, 2016b). In addition, domestic violence and sexual exploitation is reportedly on the increase in refugee camps and host communities (CEDAW Shadow Report, 2013; US State Department 2016). Observers of the refugee crisis reported that women, men, and community leaders consistently identified sexual violence as a primary reason their families fled the country (US State Department, 2016).

There is no law addressing violence against women, although the latter are entitled to file a complaint if she is harmed in certain incidents (Penal Code, Chapter 7 on Crimes against Morals and Public Morals; CEDAW 2012). Strong recommendations have been made to issue command orders to government forces prohibiting sexual violence and to hold perpetrators in their ranks accountable (CEDAW, 2016b).

So-called honour crimes, whereby a woman is punished or even killed by male family members for having brought 'shame' on the family honour, are known to occur. The Syrian penal code (Article 192)

allows more lenient sentences for crimes committed in the name of honour although a 2011 decree by President al-Assad amended the law, increased the minimum penalty for crimes committed against women in the name of family honour from at least two years to between five and seven years (CEDAW shadow report, 2013, p. 8; Penal Code, Article 548). Human rights groups report that the practice continues at previous or even higher levels due in part to the on-going violence (US Department of State, 2016; Freedom House, 2016).

b) Domestic violence

There is no legislation in place specifically addressing domestic violence in the Syrian Arab Republic. Women can, however, file a complaint if she is harmed in certain incidents (Penal Code, Articles 489-492; 504-507; CEDAW 2012, p.13). Domestic violence has long been a subject of social taboo, and women have very limited legal recourse against violence inflicted upon them in their own homes. Many incidents remain unreported due to victims' fear of reprisal from a husband or family member, or the perception of the police as untrained and unsympathetic to such complaints (US Department of State, 2016; ILAC 2017). When cases are reported, the police may be reluctant to intervene, and in some cases may in turn abuse the women, including sexual harassment, verbal abuse, hair pulling, and slapping (US Department of State, 2016).

Domestic violence cases are most often considered minor offences and most cases are dropped by the victim before sentencing (ILAC 2017). There is some limited support available to victims of domestic violence provided by women's organisations, including a number of shelters licensed and affiliated with the Ministry of Social Affairs and Labour (CEDAW, 2012). However, many centres are no longer operated due to the conflict and there are no specific government-run services for women (US Department of State 2016).

c) Rape

Rape is a criminal offence in the Syrian Arab Republic, but the law does not recognise the concept of spousal rape, specifically defining rape as 'when a man forces a woman who is not his wife to have intercourse' (Penal Code, Article 489). Punishment for rape carries a minimum sentence of 15 years in prison (Penal Code, Articles 489-498), but the law is not effectively enforced at the time of writing (CEDAW, 2016b; US State Department, 2016).

In 2011, President al-Assad amended the Penal Code by decree (1/2011, Article 9; Penal Code, Article 508), imposing a reduced sentence of two years' imprisonment for those convicted of rape or other sexual assault in cases where they marry their victim (formerly, perpetrators were exempt from prosecution or punishment if they married their victim). However, women and girls who are victims of rape often face hostility from the police themselves, as well as social ostracism and pressure to withdraw allegations. In addition, women and girls who have been raped may then be at risk of violence at the hands of their own family, for having brought 'shame' on the family's honour.

Rape as a tactic of war has been widespread during the on-going conflict (CEDAW, 2016a) and there is a prevailing belief that all women who are detained or imprisoned by armed actors are raped. Upon release from detention or checkpoints, and after house raids, women are often alienated from their

families and viewed as 'unfit' for marriage, and in some instances divorced or killed, because family members believe they were raped (CEDAW Shadow Report, 2014, p.12)

d) Sexual harassment

Articles 505 and 506 of the Criminal Code address sexual harassment but do not specifically cover sexual harassment in the workplace, educational or sporting establishments, public spaces, or cyber harassment/stalking. The law is not enforced and victims rarely report cases of sexual harassment due to high social stigma (CEDAW, 2016b; US State Department, 2016)

e) Female genital mutilation

There is no evidence that female genital mutilation is practised in the Syrian Arab Republic.

f) Abortion

Syria has highly restrictive laws on abortion and permits the latter only in cases where the pregnant woman's life is in danger (UNDP, 2010). Women who have an abortion face between six months to three years' imprisonment (Centre for Reproductive Rights, 2013). Those who perform an abortion with a woman's consent face one to three years' imprisonment (UN, 2010). There is limited information available on effective access to contraception, although given the unstable security situation, access to health facilities is limited.

3. Restricted Access to productive and financial resources

a) Secure access to land and non-land assets

The default marital property regime is separation of property and the original owner has the legal right to administer property during marriage (PLS, Articles 305; Legal Provisions Concerning the Personal Status Law of Qadri Basha, Art. 206). Married and unmarried women have the same rights as men to own, use, make decisions and use as collateral land and non-land assets (Civil Law 84/1948, Articles 7 and 110; see also CEDAW, 2012, p.84).

Overall however, women's land ownership remains very low, with the great majority of land owned by men (CEDAW, 2016a). In some areas, women do not inherit land and therefore do not own land, despite protection of this right under the Sharia and the law (CEDAW, 2012).

In addition, the limited inheritance rights of women are often violated, particularly when it comes to land such that, as mentioned above, women are pressured to cede their inheritance to male family members, viewed as the primary care takers of the family (CEDAW shadow report, 2013). In addition, women who own non-land assets or businesses may also hand-over day-to-day control to the male relatives, as a result of social pressure or because they do not feel confident enough to manage assets themselves (CEDAW, 2012; Kelly and Breslin (eds.), 2010, p.471).

b) Secure access to formal financial resources

The law does not appear to make any distinction between men and women's (married and unmarried) access to financial services, including bank loans and credit (World Bank, 2017). As such, women are not required to have the consent of their fathers or husbands in order to apply for or obtain loans,

although married women do need their husband's permission to work, and hence, to enter into economic contracts and activities (PSL, Art. 73). It is reportedly very difficult for women in rural areas to obtain credit, as many banks tend to require significant collateral, such as real estate guarantees (CEDAW, 2012, p.65).

In addition, there is no law prohibiting discrimination by creditors on the basis of gender or marital status in access to credit. The country's first micro finance scheme was started in 2008 (Kelly and Breslin, 2010, p.473) as well as the Women's Empowerment and Poverty Alleviation Project intended to help women establish small, income-generating enterprises and providing financing for this purpose (CEDAW, 2012, p.79). In addition, there are loan schemes that specifically target women, with the aim of increasing their economic participation (UNICEF, 2011, p.3). Due to the conflict, however, most programs to this regard are not currently operable (CEDAW, 2016a).

c) Workplace rights

The Syrian Arab Republic has ratified ILO Conventions 100 and 111, but not 156, 183, or 189.

The 2010 Labour Law mandates non-discrimination on the basis of sex in employment and Article 2 specifically covers promotions, trainings, assignments, and termination (but not job advertisements, selection criteria, recruitment, hiring, or terms and conditions). The Labour Law also mandates equal remuneration for men and women for work of equal value (Article 75). However, married women may only work outside the home if they have their husband's permission to do so (PSL, Art. 73; CEDAW, 2012).

Marriage contracts includes a small section called 'special conditions' whereby the groom and bride may add their own conditions to the marriage agreement. Women, for example, can list conditions relating to the pursuit of education after marriage or employment outside the home. Husbands do not need to include such conditions in the marriage contract (CEDAW, 2012). However, even in the event of a 'special conditions' section, a husband who ultimately opposes his wife working may exercise his right to divorce her, as mandated by his right to unilateral and unconditional divorce (CEDAW, 2012). In most cases, women are unaware that they can include their own conditions in a marriage contract, usually only seeing the contract to sign it after the marriage ceremony has been performed. In addition, the Labour Code (Article 120) bars women from working at night (except in certain professions, e.g. healthcare) and in professions deemed injurious to their health or morals.

According to the Labour Law (Article 121), after 6 consecutive months of service to the same employer, pregnant women are entitled a fully paid maternity leave. The length of maternity leaves depends on whether or not they already have other children, and varies from 120 days for the first childbirth, 90 for the second, and 75 days for the third (Art. 121). The law does not mandate paid or unpaid paternity or parental leave.

While the labour law (Article 122) prohibits an employer from dismissing a female worker or terminating her contract while she is on maternity leave, she is not guaranteed an equivalent position when she returns. Many women are either employed in agriculture or the informal section, meaning that they receive no regular salary and are not protected by employment legislation or social security benefits (CEDAW Shadow report, 2013). Moreover, the formal labour force participation rate for

women in the Syrian Arab Republic is quite low, despite high literacy and school enrolment rates (World Bank 2016); a situation strongly exacerbated by the conflict.

4. Restricted Civil liberties

a) Citizenship rights

Married and unmarried women have the same rights as men to acquire, change and retain their nationality (Constitution, Nationality Law, Section V). Women cannot, however, confer citizenship to children born to non-Syrian fathers (CEDAW Shadow Report, 2013, p.4 and p.28; Nationality Law, Article 3)). More specifically, article 3 of the Syrian Nationality Law deems persons to be Syrian Arabs anyone born in or outside the country to a Syrian Arab father, or anyone born inside the country whose paternity may not have been legally established, stating that ‘anyone born inside or outside the country to a Syrian father’ shall be considered Syrian. Many children whose fathers are missing or deceased due to the continuing conflict are consequently at risk of statelessness (US State Department, 2016).

Although women have the same rights as men to register the births of their children, nationality is only transferred from the father and mothers therefore must struggle to register the births of their infants. Moreover, in large areas of the country, civil registries are not functioning due to the conflict, such that authorities do not register births (Freedom House, 2016). By law, births are to be registered within a month, otherwise, a fine must be paid if the birth is registered within a year. If the birth is registered after that period, the fine becomes more expensive and a police report is required to register the event. In case the child birth was a result of unregistered marriage illegal relationship, or the father was unidentified, a lawsuit should be filed before Sharia Courts to authenticate the lineage (UNHCR, 2014)

Although neither unmarried nor married adult women need their husbands’ or fathers’ permission to obtain a passport or national ID card, women are required to obtain written permission from the father of her children in order to leave the country with them (CEDAW Shadow Report, 2013, p.4). In addition, a husband may file a request with the Interior Ministry to prohibit his wife from departing the country (PSL, Article 70). More broadly, the proliferation of military checkpoints, open fighting and on-going general insecurity has severely restricted movement in the Syrian Arab Republic.

b) Voting

Legally, women have had the right to vote and be elected on equal footing with men since 1953, but women run for office in far smaller numbers than men do, largely because Syrian society discourages women from entering the public sphere.

c) Political voice

Women have the same rights as men to hold public and political office in the legislature, executive, and judiciary, but they are poorly represented in political parties, professional associations, religious leadership, and in decision-making positions in the judiciary and executive (ILAC, 2017; Freedom House, 2016). Moreover, there are no women judges in the Personal Status Courts. While they are not explicitly excluded by law, Article 24 of the PSL states that ‘the judge is the guardian of whoever has

no guardian”. Some officials argue that based on this provision, a woman may not fulfill the role of a Sharia Court judge because she cannot act as the guardian of a minor or a marriage guardian (ILAC, 2017). Among the other Personal Status Courts, only the Greek Orthodox religious courts explicitly allow female judges.

There are no quotas at the national or sub-national level to promote women’s political participation, nor are women encouraged to participate politically. Rather in some governorates, there are strong restrictions on dress codes and women’s engagement in public life (US Department of State, 2016). A National Strategy for the Empowerment of Women (2005-2010) was formulated in part to adopt measures to increase women’s participation in key position in the legislative, judicial and executive.

However, due to the conflict, little action has been taken and no subsequent plans have been developed (CEDAW, 2012, p.38). It is widely believed that the most appropriate sphere for women is the home and the family, while the wider world and the sphere of public and political interaction is reserved for men. While tempered by the conflict, there are signs that this is changing as women gain more access to education, participate in the workforce in larger numbers, and make important contributions to the family income amid difficult economic conditions (Kelly and Breslin (eds.), 2010).

d) Access to justice

The Civil Code (Article 46-48) and the Commercial Law (149/1949, Article 15) provide married and unmarried women with the same capacity to sue and be sued (Kelly and Breslin (eds.), 2010, p. 5). However, the evidentiary worth of a woman’s testimony depends on which system of courts is hearing her case. Women are treated as full persons before the civil and criminal courts, which are secular and come under the umbrella of the Ministry of Justice. Similarly, the civil and commercial codes grant women the same legal capacity as men (Kelly and Breslin (eds.), 2010).

The Civil Procedures Code (Ch.4) also recognises personal law courts and in Sharia courts a woman’s testimony is worth half that of a man (PSL, Article 12). In addition, certain provisions of the penal code discriminate against women. In instances of adultery, for example, women and men receive disparate treatment (Articles 239-242 and Article 548). To prove his case, a man may present any form of evidence before the judge, while a woman may submit written evidence only, such as a written confession by the husband (Kelly and Breslin (eds.), 2010, p. 5).

There is no formal legal aid system in Syria, and lawyers generally do not accept pro-bono cases. The cost of obtaining a lawyer is generally a barrier to access to justice for both men and women, although it may disproportionately impact women, as they often lack control over household finances. While the legal framework does provide that a woman may have her own bank account and control her own money, men generally control the family finances, which can result in women’s inability to retain private legal assistance. Fears of repercussions from her husband and family may also contribute to a woman not pursuing formal legal remedies (ILAC, 2017, p.56).

There have also been reports that male judges harass women litigants and even women lawyers in court (Freedom House 2016; ILAC, 2017). In areas outside government control, barriers to access to justice and women’s legal needs are exacerbated. These issues are further complicated by restrictions on freedom of movement, displacement, economic hardship, aerial bombardment, and the actions of

armed groups. Although the systems in these areas differ depending on the armed group, they are generally more conservative in dealing with women than in government controlled regions (ILAC, 2017, p.80).

The Commission for Family Affairs, Ministry of Justice, and Ministry of Social Affairs and Labour share responsibility for attempting to afford equal legal rights to women. As mentioned above, the last National Strategy for the Empowerment of Women (2005-2010) aimed to monitor and follow up on the application of constitutional provisions that establish equality and equal opportunity between the two sexes. To this end, Women's Empowerment Units were established in several establishments and ministries to monitor implementation of the National Strategy to Promote the Participation of Women (CEDAW, 2012, p.38). However, due to the conflict a new National Strategy has yet to be elaborated.

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