

Tajikistan

1. Discrimination in the family

a) Overarching legal framework for marriage

The Family Code regulates marriages in Tajikistan and only confers legal validity to those registered with civil registry offices (art. 10). Without additional civil registration, religious marriages (Islamic '*nikeh*' ceremonies) and informal unions thus do not benefit from the provisions of the code. Despite this legal requirement many couples marry through *nikeh* ceremonies only, especially in cross-border unions (ADB, 2016), due to the restrictions imposed in 2011 on foreigners wishing to marry Tajik citizens (foreigners must legally reside in the country for at least a year and conclude a prenuptial agreement – Family Code art. 12 para. 3).

Parents traditionally choose the future spouse of their children (IPHR et al., 2017), despite the nullity of forced marriages characterised by consent given under duress or by deceit (Family Code art. 28 para. 1). Moreover, whilst polygamy is criminalised (Criminal Code art. 170), it is still frequent and perceived as a way of overcoming poverty (ADB, 2016).

In this context, the 2011-2020 National Strategy to Promote the Role of Women in the Republic of Tajikistan (hereafter referred to as the '2011-2020 National Strategy') sets out to promote a positive image of marriage in society to raise awareness about the adverse effects of polygamy, to encourage couples to conclude marriage contracts, and to increase the capacity of registry offices, among other measures.

b) Child marriage

The legal minimum age of marriage for women and men is set at 18 years (age of majority), although the court can marry 17 year olds in exceptional circumstances (Family Code art. 13 para. 1-2), and can refuse to invalidate the marriage of a minor to protect the best interests of the child (Family Code art. 30 para. 2).

Families reportedly continue to marry underage daughters, both through *nikeh* ceremonies and through registered marriages (IPHR et al., 2017), despite facing up to six months' imprisonment or up to two years of correctional labour for such acts (Criminal Code art. 168). Those who marry underage partners also face fines or up to six months' imprisonment (Criminal Code art. 169).

At present, there is no definition of 'exceptional circumstances' enabling a Court to marry 17 year old. The 2011-2020 National Strategy aims to fix this legal void and to introduce a mandatory medical examination for child marriages authorised by the court. The strategy also provides for information and awareness-campaigns on the legal age of marriage.

c) Household responsibilities

The Family Code states that spouses are equal in all spheres of family life (art. 30), including in their exercise of parental authority (art. 61 para. 1). As such, spouses owe mutual respect and assistance to one another and have a shared duty to raise their children and provide for their education (art. 30 and 63). Either parent can choose the family's place of residence (art. 32 para. 1) and be the legal guardian of their child (art. 57 para. 1 and art. 64 para. 1).

Reports indicate that parental authority discriminates against daughters in the sphere of education, as boys are expected to provide for their parents who thus invest more in their education (ADB, 2016). Girls frequently drop out of school to look after siblings or ill family members and to fulfil household responsibilities (ADB, 2016).

The tradition is for couples to move in with the husband's family, but the increasing rate of male labour migration is contributing to more and more women being evicted from their husband's family home while their husband is abroad (IPHR et al., 2017). Moreover, 90% of women reportedly have no say in domestic decisions.

d) Divorce

Either spouse can file for divorce (Family Code art. 16 para. 2), although men are prohibited from divorcing during their wives' pregnancy and in the 18 months following the delivery (Family Code art. 17). In considering a unilateral request for divorce, the court must attempt to reconcile both parties and is entitled to postpone proceedings to that end, for up to six months (Family Code art. 22). The court can only pronounce the divorce if reconciliation measures prove ineffective, or if the court establishes that the family unit cannot be maintained (ibis).

Sharia law permits men to initiate divorce by repeating the word '*talaq*'. This practice applies to both registered religious marriages and unregistered marriages. Divorce initiated by '*talaq*' in unregistered marriages is especially problematic for women, depriving them of their rights to joint property and child support, and constituting sufficient grounds for in-laws to evict them (ADB, 2016). Women's marital property rights are also often violated after dissolution of registered marriages (ADB, 2016).

Parental rights continue after divorce (art. 66 para. 1), in which case child custody is jointly determined by both parents or awarded to either parent by the court, if an agreement cannot be found (Family Code art. 24).

e) Inheritance

Every citizen has a constitutional right to inherit (art. 32). The exercise of this right is outlined in the Civil Code, which regulates the inheritance of property and *dekhan* farms (private land) (art. 1141 and ch. 60). Daughters and sons have the same right to inherit private land and property, as do female and male surviving spouses (art. 1166), and gender equality is maintained among subsequent lines of heirs (art. 1167-1168). Moreover, disinheritance of a surviving spouse is prohibited, with the law further stipulating that the inheritance of the widow shall not infringe upon his/her rights associated with matrimonial property, including the right of ownership to part of the estate acquired during marriage (art. 1172).

However, female widows often lack rights over their deceased husband's property given that property certificates are commonly issued in the husband's name only, or in the name of his family members (ADB, 2016; USAID, 2010). Similarly, land titles cannot be split among spouses, meaning that land inheritance rights are not maintained through marriage or after divorce (USAID, 2010; WECF, 2015).

2. Restricted Physical integrity

a) Violence against women

The 2011-2020 National Strategy focuses on violence against women (VAW) and lists a number of key challenges to address, including low public awareness of the issue, insufficient training of law enforcement, educational and medical personnel on gender-based violence and the protection of human rights, inadequate resourcing of police stations, and the lack of effective institutional mechanisms to prevent and address VAW. Wide-ranging measures to curb VAW are set out in the strategy, from social and scientific research on the issue, statistical reporting and training of social workers, relevant health personnel, education and law enforcement agencies, to outreach and educational activities, the establishment of a hotline, and actions to support the rehabilitation of perpetrators.

b) Domestic violence

Domestic violence is widespread and accepted in Tajikistan, with a prevailing culture of silence and frequent inaction by the police (IPHR et al., 2017). Women are often subject to violence by their in-laws after moving in with their husband's family, due to the imbalanced power relations between them. Due to the lack of shelters and longer-term social housing, divorced female victims sometimes apply to the court to continue residing in the former marital home, despite the risk of further violence, if they cannot return to live with their parents (IPHR et al., 2017).

The 2013 Law on the Prevention of Domestic Violence (No. 954) is seen as a turning point in protection from domestic violence. The text defines physical, psychological, sexual and economic violence within the family (art. 1) and specifies survivors' rights to receive legal, medical, psychological and social assistance, to be referred to dedicated centres providing such support, and to file complaints and instigate criminal proceedings (art. 4). The text also lists the responsibility of State and non-state actors working in the spheres of women, family and child rights, as well as education, labour, health and law enforcement (art. 7-16). A strong emphasis is placed on educational and awareness raising measures at State level (art. 9, 11-12, 15-16), whilst NGOs are tasked with providing 'support centres' in which survivors can receive free temporary shelter and medical / psychological / legal / social assistance (art. 16). The Government is responsible for providing funding to these support centres (art. 7). The text also provides for the creation of medical and social rehabilitation centres within urban/district hospitals and medical clinics (art. 17), and for employers to provide assistance to any employees suffering from domestic violence (art. 15).

However, the 2013 law does not define the notion of 'family' beyond specifying that de facto relations fall under the scope of the law (art. 4), thus creating a legal gap in protection (e.g. for members of the extended family, for polygamous marriages). The law does not criminalise domestic violence either,

instead providing for administrative liability (fines or administrative detention orders ranging from 5-15 days). Whilst numerous articles of the Criminal Code can be used to prosecute incidents of domestic violence (articles relating to rape, torture, assault, bodily harm, driving someone to suicide etc.), only those leading to severe injury are prosecuted *ex-officio* by the State, meaning that victims of assaults (Crim. Code art. 112) and those suffering from 'lesser bodily injury' (Crim. Code art. 116) are required to initiate criminal proceedings (Crim. Procedural Code art. 24 para. 2 and art. 354). Charges can be dropped altogether in these two cases if both sides reconcile (Crim. Procedural Code art. 24 para. 3).

Obtaining justice is particularly hard for victims of economic and psychological violence, as the law requires victims to specify a list of witnesses and to provide medical certificates demonstrating the physical abuse (IPHR et al., 2017). Amnesties are also frequently handed out (IPHR et al., 2017) and free legal aid is only guaranteed to those suspected and convicted of domestic violence (Criminal Procedural Code art. 51), but not to survivors.

Thirty-three crisis centres and three temporary shelters are operating nationwide, but these centres rely heavily on international funding (CEDAW, 2015). Moreover, survivors can only receive emergency shelter for 14 days and places are limited (IPHR et al., 2017). In the Kulyab region for instance, only six beds and one maternity room are available for a population size of 1.1 million, of which 52% are women (IPHR et al., 2017).

The government is currently implementing a ten-year State Programme for the Prevention of Domestic Violence for the period 2014-2023 (CEDAW, 2015). It is also drafting a new version of the Criminal Code with a separate article on domestic violence, and developing standards of response to domestic violence cases (IPHR et al., 2017). Other important measures taken by the government include the staffing of 12 local police stations with female 'domestic violence prevention inspectors' trained in gender-sensitive community policing (HRW, 2017), the setting up of 110 state-run information and counselling centres (CEDAW, 2015), and the commitment to produce data on domestic violence disaggregated by age and sex (IPHR et al., 2017).

c) Rape

Rape is criminalised under art. 138 of the Criminal Code and defined as compelling someone to submit to sexual intercourse by using force, threatening to use force against that person or a relative, or by taking advantage of that person's helplessness. Penalties range from 3-7 years' imprisonment to life imprisonment or the death penalty, depending on the circumstances and the relationship between the victim and the perpetrator. Marital rape is not specifically criminalised.

Abusers often escape punishment because victims feel too humiliated to bring evidence to court and are perceived by society as being at fault (2011-2020 National Strategy).

d) Sexual harassment

Sexual harassment is not prohibited under the Labour Code nor criminalised (CESCR, 2015), although the 2011-2020 National Strategy aims to fix this legal gap by introducing legislation banning all forms of discrimination, including sexual harassment. There is very little information available on sexual

harassment, although there are reports of women who have experienced sexual harassment by tax authorities when registering businesses and making payments (ADB, 2016).

e) Female genital mutilation

There is no evidence of female genital mutilation in the Kyrgyz Republic (UNICEF, 2016).

f) Abortion

Abortion is available on request during the first 12 weeks of gestation and must be performed by a licensed physician in a hospital or other recognised medical institution (UN DESA, 2013). Abortion is legal thereafter on limited grounds, until 22 weeks of gestation (e.g. divorce or death of the husband during gestation, pregnancy resulting from rape, pregnant woman not married, family income below the minimum wage, husband severely disabled) (IPPFEN, 2012). Minors wishing to abort require the consent of their parents or guardians, and medico-social counselling must be provided to all women before undergoing an abortion (Law No. 337 of 12 November 2002 on reproductive health and reproductive rights, art. 20). Abortion based on the sex of the foetus is prohibited (ibis).

Forcing a woman to abort carries a penalty of up to two years' imprisonment or correctional labour (Criminal Code art. 124), whilst medical practitioners face professional bans or fines (up to 200-500 times the minimum wage) for performing illegal abortions (Criminal Code art. 123 para. 1). Illegal abortions performed by unlicensed physicians are punished by up to two years' imprisonment or fines equalling 500-700 times the minimum wage (Criminal Code art. 123 para. 2).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

The Civil Code provides women with the same right as men to own, use and dispose of property, as well as to provide it as collateral and make any other decisions relating to their property (art. 232 and 235). Mutual consent is required for the administration of marital property and must be notarised for certain transactions (e.g. relating to land estates) (Family Code art. 35). Marital property is divided equally among spouses upon divorce, unless otherwise specified (Family Code art. 39).

All land is State owned (Land Code art. 2), but women have the same right as men to manage land plots, to lease them out and to acquire the production of the land (Land Code art. 19). Only 5-6% of agricultural land is used today as household plots. The rest is divided among '*dekhan*' farms (60%), the State and other agricultural entities (USAID, 2010). District and local governments are responsible for allocating land plots for limited or perpetual use (Land Code art. 8-9), meaning that those wishing to establish a family *dekhan* farm must petition their local government for land.

The 2011-2020 National Strategy focuses inter alia on enhancing women's access to employment in agriculture.

In practice, women face strong discrimination in accessing property and land. According to custom, women do not have household property rights and property certificates are commonly issued in the husband's name only, or in the name of the father or brothers in law (ADB, 2016; USAID, 2010). This

means that if the husband dies, the widow has no right over his property (USAID, 2010). 80% of women work in the agricultural sector, but only 12% of *dekhkan* farms are run by women (CEDAW, 2013). Women are also often excluded from receiving individual *dekhkan* plots or household plots because they are often thought to lack farming knowledge and the ability to cultivate their own land (USAID, 2010). In addition, land inheritance rights are not maintained through marriage or divorce, joint land titles do not exist, and women who marry and move to live with their husband lose their land-use rights as the law requires land users to live on or adjacent to the land (USAID, 2010).

b) Secure access to formal financial resources

Women and men have the same right to access bank loans and credit, regardless of their marital status (2005 law on State guarantees for gender equality, art. 12). In 2014, 9.1% of women had an account at a financial institution, compared to 13.9% of men, and 3.1% of women received loans from a financial institution, compared to 4.5% of men (World Bank, Findex). Microcredit and business development programmes targeting women are being implemented by the government with the help of international donors such as the Asian Development Bank and European Bank for Reconstruction and Development, particularly in rural areas, in the framework of the 2011-2020 National Strategy.

c) Workplace rights

The Labour Code and 2005 'Law on State guarantees for gender equality' (hereafter referred to as the 2005 Law) aim to promote women's labour rights through positive discrimination and a general prohibition of discrimination in employment on the basis of sex. However, women are prohibited from performing 'heavy work' or working in dangerous conditions, as per a government-classified list (Labour Code art. 160). Restrictions also apply to women's right to work night hours (Labour Code art. 161) and overtime (Labour Code art. 162).

The law recognises the principle of equal pay for work of equal value and provides women and men enjoy with equal opportunities to conclude contracts, access vacant positions and benefit from professional development – in both the public and private spheres (2005 Law, art. 10-13). Employers are required to take into account the family obligations of their employees, and must provide training for employees returning from maternity leave or parental care (2005 Law, art. 7). Employers are prohibited from reducing the salary or refusing to hire a woman on the grounds of pregnancy or child upbringing (Labour Code art. 159). Moreover, employers cannot terminate the contract of female employees during their pregnancy or before their child reaches three years of age (or 14 in the case of single mothers), except if their contract expires or in the event of liquidation (Labour Code art. 172).

Mothers and single fathers are entitled to 20 weeks of paid maternity/paternity leave, and up to 156 or 180 calendar days, respectively, in the event of a complicated birth or multiple births (art. 34 of Decree No. 630 (2014) "on the procedure and terms of payment of temporary disability benefits, maternity and family benefits"). During this time mothers and single fathers are paid 100% of their wages. Mothers and fathers can also claim paid parental leave until the child reaches 18 months, in which case they receive 100% of the minimum monthly wage (Law on State Social Security art. 14). Additional leave can be granted until the child reaches three years of age, in which case paid leave is limited to the first 18 months (Law on State Social Security art. 14).

Despite these provisions the United Nations has raised concerns about the low participation of women in the labour market, the persistent pay gap between women and men, the disparities in retirement benefits, as well the vertical and horizontal sex segregation in employment (CESCR, 2015).

4. Restricted Civil liberties

a) Citizenship rights

The 2015 Constitutional Law on Tajik Nationality regulates the acquisition and loss of Tajik nationality. Women have the same right as men to confer Tajik nationality to their children, regardless of their marital status (art. 13), but neither men or women can confer Tajik nationality to their spouse. Tajik nationality is retained when marrying a foreigner, after divorcing, or in the event that the other spouse changes nationality (art. 4 and 7). Women and men have the same right to relinquish their Tajik nationality (art. 21).

According to the Department of Foreign Affairs, a law on passports and civil registration was envisaged in 2014, but has to be developed.

Either parent can register the birth of their child and must do so within three months of the birth (art. 18 of the 2006 Law on State registration of civil acts). This parental obligation is reiterated in the Act on the Responsibility of Parents for Child Training and Upbringing (CEDAW, 2015). To increase access to birth registration in rural areas, the law stipulates that a relative, guardianship authority, or medical officer (from the institution where the delivery occurred) can make the application for registration (art. 18 para 2.). The law also allows for late registrations in urban and regional civil registry offices (art. 23). According to the 2012 Demographic and Health Survey, 18.3% of children under 5 are not registered or do not have a birth certificate despite their registration (UNICEF country page).

b) Voting

The 2005 law provides women and men with equal voting rights (art. 8). This principle is reaffirmed in art. 4 of the 1999 Constitutional law on elections to the *Majlisi Oli* (National Parliament) of the Republic of Tajikistan, and in art. 2 of the Constitutional law on the election of deputies to local Majlises of people's deputies, which both proclaim the right for all citizens to vote once they have reached 18 years of age, provided that they are legally capable and not in detention.

The last national parliamentary elections of 2015 showed that women voted less than men (OSCE, 2015). This can be attributed to the common practice of family voting, whereby men often vote for their spouse and other family members (EFDS, 2016).

c) Political voice

Under art. 5 of the 2005 law on gender equality "the state ensures equal representation of men and women in the legislative, executive and judicial branches of state power through legal, organizational and other mechanisms". This principle is applied in legal provisions regulating the right to stand for president (ch. 4 of the Constitution), for deputy in the lower chamber of the national Parliament (art.

28-29 of the 1999 Constitutional law on elections to the Majlisi Oli of the Republic of Tajikistan), for local parliament (art. 26 of the constitutional law on the election of deputies to local Majlises of people's deputies), and for village/town councils (art. 4 of the law on local self-government in villages and towns).

However, there are no special legal measures (e.g. quotas, incentives) promoting female participation in national and local politics, and women are disproportionately affected by the legal requirements for Parliamentary candidates to pay financial deposits and hold higher education certificates, according to art. 28, 29 and 32 of the Constitutional law on elections to the Majlisi Oli of the Republic of Tajikistan (OSCE, 2015). In the last Parliamentary elections of 2015, only 24% of candidates were women, leading to underrepresentation in the lower chamber (19% of seats) (OSCE, 2015). The United Nations has also raised concerns about the insufficient capacity building of potential candidates and lack of support for female candidates, which is why it recommends training community leaders, politicians and teachers on gender equality, in addition to establish statutory quotas and incentives for political parties to nominate female candidates (CEDAW, 2013).

The 2011-2020 National Strategy aims to address these issues. Among the actions listed in the strategy, the government plans to develop a Code of ethics promoting female involvement in social movements and politics, to train women in politics, to organise public hearings on the issue of quotas for women in the National Parliament and in local parliaments, and to carry out educational programmes on female leadership in local governments and rural communities.

d) Access to justice

The law provides women with the same capacity as men to sue or be sued, regardless of their marital status (Civil Procedural Code, art. 38). Women's testimonies carry equal weight as those of men in civil and criminal courts, regardless of their marital status (ch. 4 of the Civil Procedural Code, art 63-64 of the Criminal Procedural Code). However, there are no procedural rules addressing the specific interests of women and girls, nor measures to facilitate access to justice for women, particularly in rural settings (CEDAW, 2013).

The widespread referral of cases to '*Mahalla*' committees – informal groups that draw upon Islamic law and customary norms, and work closely with religious leaders (Center for Gender and Refugee Studies, 2016) – is also seen as hampering women's access to justice in some cases, particularly in relation to issues of violence against women, as this informal justice mechanism is based on mediation and reconciliation (EFCA et al., 2011). Moreover, members of these groups are often approached individually to resolve a particular issue, usually without any written application of review process (EFCA et al., 2011). Local elders and village leaders are also commonly approached to mediate cases (EFCA et al., 2011).

In 2006, the Committee for Women's and Family Affairs (CoWA) was named as the State agency responsible for government policy on women's rights, family rights and gender equality. Its mandate is broad, encompassing for instance the monitoring of international commitments and compliance of legislation with international standards, the reception and consideration of letters, complaints and suggestions from citizens, as well as the use of media to disseminate information about the status of

women, their rights and opportunities, and the foundations of gender equality (art 2 of the 2006 Government decision on the CoWA).

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